

MINUTES OF BOARD OF COUNTY COMMISSIONERS
MILLARD COUNTY THE 15th DAY OF JULY 2014
AT THE COURTHOUSE, FILLMORE, UTAH

PRESENT: Alan M. Roper..... Chairperson
James I. Withers..... Commissioner
Daron P. Smith..... Commissioner

Richard Waddingham..... County Attorney
Norma Brunson..... County Clerk
Marki Rowley..... Deputy County Clerk

ALSO PRESENT: Johnnie Miller..... UCIP
Robert Dekker..... County Sheriff
Jamie Orullian..... Fillmore City
Wayne Jackson..... Military Liaison
Zane Pentzz..... Sunrise Engineering
Frank Paxton..... Millard County Republican Party
Connie Hansen..... County Recorder
Pat Manis..... County Assessor
Hannah Jones..... Chronicle Progress
Wendy Leatham, Greg Kesler, Ray Whitaker, Lynn Whitaker,
Scott Blackburn, Steve & Adele Maxfield, Jim Dyer, TJ Lavato, Ben Pratt,
Nathan Pratt and John Pratt..... Citizens

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 Roper to the public and Commission members.

OPENING STATEMENTS

Commissioner Roper asked if anyone had an opening statement to give. Commissioner Smith said the invocation. Everyone stood and said the Pledge of Allegiance to the Flag. Commissioner Roper excused Clerk Brunson and Commissioner Withers who were at the recount at the Clerk's Office.

APPROVAL OF JULY 1, 2014 COMMISSION MINUTES

The proposed minutes of a regular County Commission meeting held July 1, 2014 were presented for consideration and approval. Following review and consideration of minor corrections, Commissioner Smith made a motion to approve the minutes of July 1, 2014, as corrected pending the County Attorney's review.

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

FOLLOW UP ACTION ITEMS FROM JULY 1, 2014

Commissioner Roper said that Tony Fuller, Fuller Family Farms, brought in the final plat and is waiting for approval from Attorney Waddingham.

RATIFY THE APPROVAL OF WAIVING 50% OF THE FEE FOR THE USE OF THE MILLARD COUNTY INDOOR ARENA FOR THE MILLARD COUNTY HORSE COUNCIL AND DELTA BARREL ASSOCIATION ON BEHALF OF A 4-H BENEFIT

Commissioner Smith made a motion to ratify waiving 50% of the fee for the use of the West Millard County Indoor Arena for the Millard County Horse Council and Delta Barrel Association on behalf of a 4-H benefit.

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

DISCUSSION AND POSSIBLE APPROVAL OF RESOLUTION 14-07-15, A RESOLUTION TO AMEND THE MILLARD COUNTY PAY PLAN BY ADJUSTING CERTAIN PERCENTAGES, ELIMINATING THE PERCENTAGE LIMITS ON PROMOTIONS, AMENDING THE PAY PLAN FOR COMMISSIONERS, AMENDING THE GRADE FOR A PART-TIME POSITION AT THE GOLF COURSE, AND ESTABLISHING A NEW PART-TIME POSITION FOR THE MILLARD COUNTY RECREATION DEPARTMENT

Commissioner Smith said that the resolution that is currently in place would strike the language that discusses amending the pay plan for the commissioners and the elected officials. He said that any changes made to the commissioners salary requires a public hearing. A public hearing will be scheduled for the next commission meeting.

Commissioner Smith explained the changes in the resolution which included amending and adjusting the Millard County Pay Plan by adjusting the full-time and part-time schedules by a 2% cost of living adjustment which would increase all of the steps.

Commissioner Smith made a motion to adopt Resolution 14-07-15, a resolution of the Millard County Commission eliminating the percentage limits on employee promotions, amending the grade for a part-time position at the golf course, creating a new part-time position for the Millard County Recreation Department, and amending Section IX of the Millard County Personnel Policies

and Procedures Manual to be in conformity herewith.

Commissioner Roper stepped from the chair and SECONDED the motion. Deputy Clerk Rowley called for a roll call vote. Commissioner Smith voted YES. Commissioner Roper voted YES. Commissioner Withers was excused. The voting was unanimous and the motion carried.

Sheriff Dekker said that he appreciates the commission for listening and taking that step which is a good step for the employees.

DISCUSSION AND POSSIBLE APPROVAL OF AN AGREEMENT BETWEEN THE FOREST SERVICE AND MILLARD COUNTY FOR THE CATCH BASIN UP DRY CREEK CANYON

Attorney Waddingham said that there has been a permit proposed by the Forest Service to put in Catch Basin in Oak City. He said that the way the permit is structured, Millard County is the permittee and is responsible for maintenance and any type of liability. He said that basically Millard County has obtained insurance coverage on the project. There was a question as to whether Oak City should join the County as a permittee, but was told by BLM that there can only be one permittee. It was then suggested to have Oak City enter into an interlocal agreement with the County, which would need to be approved before the County would sign the permit.

Commissioner Roper visited with the Oak City Town Mayor who indicated that he would be willing to enter into that agreement with the County after it is submitted and approved by the Town Council.

Attorney Waddingham said that the interlocal agreement would require Oak City to be responsible for the project the same as the County and he would recommend that they have insurance as well.

Attorney Waddingham will have the interlocal agreement ready in time for Oak City's Town Council meeting which takes place one week from Thursday.

DISCUSSION AND POSSIBLE ACCEPTANCE OF A BID WITH FRONTIER COMMUNICATIONS TO REPLACE THE PHONE SYSTEM IN BOTH COUNTY OFFICES IN DELTA AND FILLMORE

Commissioner Smith said that this item was tabled from a previous meeting so that the County could visit with Millard County IT Richard Beckstrand and also to decide whether the County would pay the warranty on a yearly basis or in one lump sum. It was decided that the County would pay the warranty on a yearly basis.

Mr. Beckstrand said that the cost of the warranty is the same by breaking it out yearly and reflects the annual cost.

Commissioner Smith said that he visited with Sheryl Dekker, Millard County Satellite Office Manager, who is in favor of this, since it is really needed at the Satellite Offices in Delta.

Attorney Waddingham asked how many people bid on the project. Mr. Beckstrand said that two other companies submitted figures. He said that the price for the system was the same as Frontier, but Frontier replaced the phone system in the Public Safety building and would be able to tie maintenance on all three systems together which seems to work best for the County.

Commissioner Smith said that the cost for the system at the Satellite Office in Delta would

be \$22,208.78 and the County would budget for the warranty and software insurance for the second, third, fourth and fifth year in the amount of \$814.60 per year. That amount may change if the County chooses not to use some of the bigger equipment, but the cost would not be more than the amount listed.

The cost for the system at the Courthouse (on Main Street) in Fillmore would be \$38,949.72 and the warranty and software insurance would be budgeted at \$1,287.50.

Commissioner Smith said that both of these items were budgeted for in the Capital Budget and there is enough money in the budget to cover both of the bids.

Commissioner Smith made a motion to accept the bid from Frontier Communications to replace the phone system in both the Delta Office in the amount of \$22,208.78 and the County will budget \$814.60 per year for the warranty and software insurance and the Fillmore Office in the amount of \$38,949.72 and the County will budget \$1,287.50 per year for warranty and software insurance.

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

DISCUSSION WITH JOHNNY MILLER WITH UCIP

Johnny Miller, UCIP, said that he understands that another company gave a presentation on workers' compensation insurance. Mr. Miller said that he wanted to review with the County what UCIP provides.

He explained that UCIP purchases one joint Workers' Compensation policy for the Counties which allows the counties to receive a 20% discount off the normal rates. He gave a brief history of the State Workers' Compensation Fund.

Mr. Miller said that currently there are 17 of the 19 counties in Utah who are with UCIP for Workers' Compensation insurance. He said that if a county chooses to go with a different company it would not hurt UCIP, but rather the counties would be hurt because their rates would increase. He said the more counties who participate the bigger the discount they would receive.

Mr. Miller presented some handouts. He went over the Workers' Compensation Cost Analysis for the County. He said that the cost analysis reflects five years of policy periods. He said that in 2010 the County had a claim which raised the EMOD, but that number should come down in 2015 once that year is dropped from the analysis.

Mr. Miller went over the WCF Safety Services handout and said that the County could receive credits for training as a group through UCIP. He said that if the County were to get workers' compensation insurance on its own it would see significant higher premium increases than what it has seen with UCIP.

Mr. Miller said that UCIP will have representatives doing trainings a few times a year with the County employees, including seminars that are free to the employees. He also said that if employees have any questions they can find online help, as well as access to a training calendar. He said that they are working on having training in other counties located outside of Salt Lake City, Utah. They will provide training at an area within your county if there is at least 50 employees in attendance, to make it worth it. He said that the County could invite employees from the cities and towns to get to the 50 employee minimum. He said that members receive discounts for the training.

Mr. Miller also discussed the dividend and what it does for the counties. He said that counties can certainly do better working together than on their own. He said that with UCIP the Counties have direct input on how claims are handled and flexibility on what goes on.

Mr. Miller said that the other counties appreciate Millard County for being a member to help lower their rates.

Commissioner Smith said that the County appreciates the value and direct input on the claims and he does not know if the County would get that anywhere else.

Mr. Miller said that on the workers compensation fund rates charged last year there was a 116% loss ratio. When UCIP ran its own self funded workers' compensation fund from 2004-2009 they found that they were losing a half a million dollars a year at the rates they were charging. He said that now there are companies claiming to charge less to save the County money. He said that question should not be, "Is it a good deal", but rather "Are they charging enough to cover the claims".

Commissioner Roper said that the County appreciates the relationship with UCIP and appreciates him for coming down.

**Commissioner Withers joined the meeting in the middle of Mr. Miller's presentation.

DISCUSSION AND POSSIBLE APPROVAL OF THE ROSENBURGER AUDIT

Commissioner Smith explained that this agenda item should have actually been listed as "Presentation of the 2013 Independent Audit".

Commissioner Roper excused Auditor Grace from this discussion since she is attending a NACO conference. John Haderlie, Larson PCA, excused Russell Olsen from attending today's meeting as well.

Mr. Haderlie presented the 2013 Independent Audit Report. He reviewed and explained the handouts i.e. the Independent Audit Report, the State Compliance Report, the Government Auditing Standards Report and the Single Audit Reports.

Mr. Haderlie said that the County is following policy and the County was compliant in all areas. He said that the Auditor and Treasurer's Office do a good job and are always forthcoming and easy to work with.

Commissioner Roper said that he too appreciates the Auditor and Treasurer's Office for their effort in this process.

SIERRA BLAD, MISS MILLARD, TO REPORT ON HER ATTENDANCE AT MISS UTAH

Commissioner Roper said that Miss Millard, Sierra Blad, finished the last few weeks of her reign as Miss Millard.

Miss Blad said that being Miss Millard was an amazing opportunity. She said that over the past year she has grown and learned so much and she gained confidence and new friendships.

She gave highlights on her year as Miss Millard including attending the County Fair where she got to mc the Junior Miss Millard. She said that Jr. Miss Millard Lilly Anderson and Little Miss

Millard Kylie Spendlove have been great and are like little sisters. Another big highlight was the Festival of Trees. She said that it was an honor to help make a tree for Sub for Santa which sold for \$650.00. She said that she also enjoyed being able to ride in a race car.

Miss Blad said that her week at Miss Utah was amazing and she learned a lot from being there. She thanked the directors for all of the support they have given to her. She said that Kelly Swallow and Natalie Stefanoff and the rest of the Board are really talented ladies and she appreciates them for all they have done. She thanked all who were involved and said that this has all been possible due to the support of the County and the directors. She said that she hopes that this program continues on a high note so that other girls can receive the same opportunities. She will forever cherish the memory.

Miss Blad's platform was "You can overcome life's obstacles". She said that she chose that platform because at a young age she was diagnosed with scoliosis and had to have back surgery to correct it, which was quite a big deal. She spoke with fourth graders and shared her story to let them know that they can overcome obstacles in life and live a normal lifestyle. She hoped that this gave the kids confidence.

Miss Blad will relinquish her crown on Saturday, July 19, 2014 at 7:00 p.m. at the Delta High School Auditorium.

Junior Miss Millard, Lilly Anderson, also thanked the commissioners for its support. She said that the pageant gives girls like her confidence.

REVIEW AND POSSIBLE APPROVAL OF A C-2 CONDITIONAL USE PERMIT (CUP) APPLICATION # Z-2014-019 FOR A 50 MW SOLAR PHOTOVOLTAIC ENERGY GENERATION FACILITY FOR PROPERTY LOCATED AT APPROXIMATELY SOUTHWEST OF INTERSECTION OF W 8900 N (SHEEP TRAIL ROAD) AND N 400 W (N COATS ROAD) MCCORNICK, UTAH - FILLMORE GRID. PAVANT SOLAR, LLC - APPLICANT. MCCORNWOOD ENTERPRISES, LLC (GREG KESLER) - OWNER. 430.628 ACRES.

Commissioner Smith went over the C-2 CUP application #Z-2014-019.

Commissioner Smith made a motion to approve a C-2 CUP application #Z-2014-019 for a 50 MW Solar Photovoltaic Energy Generation Facility for property located at approximately Southwest of intersection of W 8900 N (Sheep Trail Road) and N 400 W (N Coats Road) McCormick, Utah - Fillmore Grid. Pavant Solar, LLC - applicant. McCornwood Enterprises, LLC (Greg Kesler) - Owner, based on the findings of fact of the Millard County Planning Zoning Board who forwarded a favorable recommendation.

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

Commissioner Roper said that he appreciates Pavant Solar and working with Mr. Kesler and the group. He said that they have been real good to work with and he feels that this project will be a real economic opportunity in the county.

TREASURER HANSEN TO DISCUSS TAXATION ISSUES AND POSSIBLE BOE

Treasurer Hansen presented the financial reports to the commissioners for signature.

Treasurer Hansen presented two properties that have been assessed taxes in Millard County that are owned by School and Institutional Trust Lands Administration (SITLA). He said based on SITLA's requirement of when people lease property they send a letter to the County stating that the County cannot foreclose or go against the property but instead should notify SITLA of the delinquency. There are two delinquent properties. Aggregate Products and Minerals, account #0181827, owes taxes for the year 2010 in the amount of \$1619.46. He said that he thinks that this company is out of business. The other is School and Institutional Trusts Land Administration (SITLA) c/o Freedom Energy Farms, LLC account #0187577 owes taxes for the year 2013 in the amount of \$2188.38. He said that a certificate was recorded in 2012 for 20 annual payments but he is not aware of any other records.

Treasurer Hansen said that he notified the State regarding the delinquencies but has not yet heard back from them. He said that SITLA's method of collecting is to revoke the lease if they do not pay the tax assessment. Otherwise, the County has no recourse against SITLA.

Treasurer Hansen will send another notice to SITLA, but the County would probably have to write off the amounts owed as a loss before the year ends.

Treasurer Hansen said that there were three properties that were up for tax sale last year that were not purchased by bidders and were stricken back to the County. These properties should have been made tax exempt for the tax roll this year. He said that there is a \$0.00 balance due but they have an assessment for 2014. He asked that the commission authorize the Auditor's Office and Assessor's Office to make those three parcels tax exempt and not have any value for 2014 and future years.

Commissioner Smith made a motion to authorize the Auditor's Office and the Assessor's Office to make parcel account numbers 0099078, 0173071, 0064338 tax exempt and to not have any value for 2014 and future years.

Commissioner Withers **SECONDED** the motion. The voting was unanimous and the motion carried.

Treasurer Hansen said that there are two parcels that are owned by Oak City Town. These parcels were deeded to Oak City Town during the last tax sale. They were previously in the name of JNB Land Company account #'s 0182945 and 0183568. He said that now that these parcels are in the name of a tax exempt municipality they would be tax exempt. Each parcel had a previous balance due; one in the amount of \$2,432.53 and the other in the amount of \$83.36. He asked if those parcels could be written off and be considered as tax exempt.

Assessor Manis explained that these parcels are part of Class C roads in Oak City. The prior owner knew this and his solution was to let it go to tax sale. He said that before it went to tax sale the Oak City Town Mayor and Auditor Grace were made aware of it.

Commissioner Withers made a motion to exempt parcel account numbers 0154790 and 0133588 and to write off the taxes due.

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

PUBLIC INPUT

Wayne Jackson said that the American Legion will hold its convention in Fillmore this year. He said that it will probably be held the weekend of August 13, 2014. The convention was held here a few years back and they were treated well and wanted to come back.

Mr. Jackson said that regarding Honor Flights they have a three day trip planned. They need to come up with 25 people to attend. They have 13 people on the east side of the county. The west side of the county is still working on getting a list of who will attend. He said that so far they have collected almost \$25,000.00, but are still a little short.

Mr. Jackson said that he will be meeting with the Monument people on Thursday and will redo some of the plaques that they did not like. He said that the plaques are now complete up to the Korean War. They will finalize that era at today's meeting in Delta.

Anthony Fuller, Fuller Family Farms, inquired if all the documents were signed for the Fuller Family Farms. He also expressed appreciation to Attorney Waddingham, Commissioner Smith and Clerk Brunson for their years of professional service.

OTHER BUSINESS

Commissioner Smith said that he was contacted by Craig Dutson with Oak City Town. Mr. Dutson asked if the County would donate the ambulance that will be going out of circulation this year. The town of Oak City would like to use the ambulance for storing its supplies for its first responders. Normally the County would sell the ambulance at the surplus auction.

Commissioner Smith said that the County would have to donate it to Oak City Town. He said that the other option would be to put it out for bid to see if there are other communities who may want it as well.

Sheriff Dekker said that what Oak City Town wants to do with it is good, but the commissioners would have to make that decision. He said that the ambulance will not be used as an ambulance but rather a storage for supplies for the first responders.

Commissioner Smith made a motion to donate the surplus ambulance to Oak City Town. The value the County would receive would be under the health, safety and welfare of the citizens of the County by having the first responders respond to an emergency.

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

Commissioner Withers was invited to go with the Millard County Road Department out to the Garrison area to view a building located on SITLA property that the Air Force is willing to donate the building to the County. He said that they met with the Dougway Proving Grounds,

SITLA and the School Board and toured the building. He said that the building would be used as a Road Department facility. He said that it is a nice facility but the School Board has first choice on the building. If the County was to assume the building it would be required to sign a lease with SITLA in the amount of \$1,500.00 to \$2,000.00 a year.

Commissioner Withers said that SITLA takes a percentage of the value of the property and breaks it down to a lower amount, if the property is leased by a government entity. He said that the County has discussed constructing a building out there for some time now. It would save the County money to not have to construct a new building.

Commissioner Withers spoke with Matt Loe and Garth Lake, who are propane dealers, regarding the proposed gas project. Mr. Loe wanted to meet with the commission to discuss the project and how it would affect the propane business.

Commissioner Roper said that there was a meeting with both of those gentlemen scheduled for tonight at 7:00 p.m. but will need to be rescheduled due to neither of them being able to attend. He said that both gentlemen spoke with Linda Gillmore, MEDA, and she discussed the project with them. They felt like the County was paying for the project but were informed of the County's involvement and that it is not a done deal.

Commissioner Roper read an email that he received from Ms. Gillmor regarding a grant application which is due by August 1, 2014.

Commissioner Withers said that he is not comfortable with approving this until after receiving public input.

Commissioner Roper said that the Department of Energy offered to write a grant for the \$981,000.00. The County would then ask for a CIB interest free loan.

Commissioner Withers said that he has concerns with moving forward without public input. He said that the people do not even know how much this is going to cost them. He asked why the County would waste the time and money before knowing if those people are willing to pay the bill to have that service brought to their homes.

Commissioner Smith said that by making the application to receive the \$981,000.00 the County would not have to loan that amount to the citizens, which would be worth the effort. Commissioner Withers questioned the amount that the Department of Energy would charge the County to write the grant application. Commissioner Roper said that would be something that needs to be looked into. The grant application is due August 1, 2014.

Commissioner Smith said that the County would not have to pay the administrative fee if they choose not to accept the grant, so he does not have an issue with exploring the option.

Commissioner Roper said that the gas will be run right to the homes. Commissioner Withers questioned if there are set routes of where the gas will be going. Commissioner Smith said that the routes are still up for debate. Commissioner Roper said that they have a cost estimate for the proposed routes.

Commissioner Smith made a motion to go through the process of applying for the USDA Assistance to High Energy Cost Rural Communities Grant, pending the approval of the project. The County will not accept the loan or grant unless the communities agree with the project.

Commissioner Roper stepped from the chair and SECONDED the motion. The motion carried two to one.

Commissioner Withers asked if they are going to pass that motion without knowing the cost of writing the grant. Commissioner Smith said that if there is a cost for writing the grant it would come out of the grant, so it will not cost the County anything. Commissioner Withers said that grants are taxpayers money and he is not comfortable in writing a blank check to the Department of Energy just because they say that the application is due August 1st. He feels that the County has an obligation to its citizens to make them aware of the costs before continuing the process.

Commissioner Smith said that they would like to do the process as cheap as it can for the citizens if they do it at all. He would hate to miss the opportunity of a grant because of a deadline. Commissioner Roper said that they are still going through the process by just exploring the options. Commissioner Smith said that costs associated so far are for Zions Bank to go through the process and the County will have to cover that. Other than that, all other fees will be paid by the citizens as part of the project.

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

Commissioner Smith received a copy of the draft purchasing policy from Johnny Miller, UCIP. A copy will be sent to the rest of the elected officials and department heads and will be discussed at the next commission meeting.

Commissioner Roper met with Jane Beckwith with the Topaz Museum. He said that the Museum received a \$467,000.00 grant from the State Parks. There were some people from San Francisco who are protesting it and are wanting more input and more people involved in the process. Ms. Beckwith is concerned that this may hold the project up.

Commissioner Roper and Ms. Beckwith explored some options such as inviting the lady, who objected to the project to meet with them, as well as contacting some of the legislators of the Six County area to see what can be done. He visited with Attorney Waddingham who thinks that it is best to let the process work itself out. Commissioner Roper said that he would like to invite the senators' assistants to go over the project. He will schedule a meeting in the next few weeks.

Commissioner Roper said that the Congressional Day with Six County is August 16, 2014. Anyone who would like to attend would need to sign up by August 5, 2014. They will have a 4-wheel trip and a luncheon.

Attorney Waddingham said that he informed Mr. Fuller that he will have the plat for the Fuller Family Farms to him this afternoon with proper signatures.

Commissioner Smith reported that he attended the NACo Annual Business Conference. He attended the WIR Board Meeting and the NACo General Business Meeting. He said that there is a benefit in Millard County participating and being involved in setting NACo policy.

Commissioner Roper thanked Commissioner Smith and Commissioner Withers for going

to New Orleans. He said that it sounds like it was a great trip and there was a lot of information brought back.

Commissioner Withers said that he feels that they made some good strides on the wild horse issue, as well as some other issues back there and it was good.

POSSIBLE REVIEW OF COUNTY POLICIES AND CONTRACTS

There was none.

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

There was none.

Commissioner Withers made a motion to take a short recess.

Commissioner Smith SECONDED the motion. The voting was unanimous and the motion carried. The meeting recessed at 11:52 a.m..

Commissioner Smith made a motion to reconvene the meeting.

Commissioner Withers SECONDED the motion. The voting was unanimous and the motion carried. The meeting reconvened at 12:00 p.m..

CANVASS THE RECOUNT VOTE RESULTS OF THE 2014 PRIMARY ELECTION FOR COMMISSION SEAT A, TO BE HELD IN THE COMMISSION CHAMBERS

Commissioner Smith made a motion to enter into a Board of Canvassers.

Commissioner Withers SECONDED the motion. The voting was unanimous and the motion carried. The Board of Canvassers began at 12:01 p.m..

Commissioner Roper thanked everyone for attending the meeting today. He then turned the time over to Clerk Brunson to supervise the recount.

Clerk Brunson said that they went through the recount results this morning which were the same results as last time. She disclosed during the recount that there were three people who voted in the office who she felt like should not have been counted. She explained that there is no way of determining how those three people voted because they are secret ballots.

Commissioner Smith asked if the total number of ballots cast decreased by three, after the recount. Clerk Brunson explained that she was only disclosing that the three should not have been allowed to vote. The numbers stayed the same because we cannot pull those ballots, due to there being no way of knowing how the three voted their ballots.

Todd Macfarlane said that he is speaking on behalf of Mr. Dyer. He said that he and Mr. Dyer attended the recount this morning and prior to that he submitted a document to the County Clerk which was courtesy copied to all of the canvassers as well. He said that in that document they specifically challenged nine ballots. He said that three of those challenged were ballots that the

County Clerk chose to exclude. He said that the County Clerk disclosed that they should not have been counted, but they were counted. He gave examples of other documents that he and Mr. Dyer are challenging. He said that he wanted to make a record of those so that the Board of Canvassers could review them.

Mr. Macfarlane said that it is his position that if the canvassers are going to certify any type of results they need to consider what the document says, which includes a copy of all the registration forms, envelopes and provisional ballots that support the document. He said that if any ballots are concluded to not be counted then they cannot be counted. He said that they cannot be counted in the recount and then say that they should not have been counted. He then suggested that the Board of Canvassers take the time to consider the documents that they were challenging. He then informed the Board of Canvassers of the path that he and Mr. Dyer are taking which the next phase would be to take this before a judicial challenge and then a direct appeal to the Utah Supreme Court.

Attorney Waddingham made a point of clarification that Clerk Brunson never said that those three ballots were excluded from the vote. Mr. Macfarlane said what he thought Clerk Brunson said.

Commissioner Roper questioned if Clerk Brunson had a chance to look over the documents that Mr. Macfarlane claimed to have provided her. Clerk Brunson said that she received a copy of what Mr. Macfarlane sent just before the recount at 9:00 a.m. this morning, but it did not give her a lot of time to do anything with them.

Commissioner Roper asked if there was reason to take the time to view each item in question. Attorney Waddingham said that the job of the Canvassers is to canvass the recount votes from the this morning and he suggested that they do just that.

Mr. Macfarlane said that he is asking that the Canvassers consider these items while canvassing the votes, since there is conflicting information at this time including six other erroneous ballots.

Attorney Waddingham said that he would need to speak with Clerk Brunson. Mr. Macfarlane said that he would request that all discussions be on the record excluding attorney client privilege conversations.

Attorney Waddingham questioned what Mr. Macfarlane is asking of the Board. Mr. Macfarlane said that a minimum of nine ballots need to be excluded. Attorney Waddingham said that as a Board of Canvassers the job here today is to canvass the recount votes and he advised the Board to do just that.

Commissioner Withers said that he appreciates Mr. Macfarlane's concerns but questioned what the end result would be of the Board reviewing Mr. Macfarlane's documents. He said that it is an impossibility to determine who those nine voters voted for. Mr. Macfarlane said that the end result is that the Board should state it cannot declare a winner in this race based on his challenges.

Steve Maxfield gave an example of what the election law states regarding a close election if there were any errors. He said that if the Board determines that there were 5 or more significant problems then they are in uncharted territory and he does not know how it can be handled.

Attorney Waddingham said that as far as going through a canvass, going back to the judges is an impossibility. The election is over. He then read from the code book 20A-4-303. Duties of the board of canvassers - Canvassing the returns, which states that (2) In canvassing returns, the board of canvassers may not: (a) reject any election returns if the board can determine the number of votes cast for each person from it; or (b) reject any election returns if the election returns: (I) do not show who administered the oath to the judges of election; (ii) show that the election judges failed to fill

out all the certificates in the pollbooks; or (iii) show that the election judges failed to do or perform any other act in preparing the returns that is not essential to determine for whom the votes were cast; or (c) reject any returns from any voting precinct that do not conform with the requirements for making, certifying, and returning the returns if those returns are sufficiently explicit to enable the board of canvassers to determine the number of votes cast for each person and for and against each ballot proposition.

Attorney Waddingham said that what the Board of Canvassers are asked to do is canvass the vote totals that took place this morning.

Mr. Maxfield said that he is simply pointing out that if there is more than five discrepancies then the Board may want to look at it. He said that he understands that the statute is not very clear on this issue and it is a very new and nominal issue because he cannot find where this has ever happened before.

Attorney Waddingham and Clerk Brunson had a discussion. The Board of Canvassers canvassed the votes of the recount. While canvassing the votes the Board discussed with Mr. Macfarlane the documents in which he is challenging.

It was explained to Mr. Macfarlane, regarding Florence Church Malohifoou, that she requested to remain on the permanent absentee list in February but her request was not entered into the computer. When it was brought to the attention of the Clerk's Office she was then sent an absentee ballot due to operator error.

It was also explained that, regarding Aubrey Kay Woodard, she marked and scribbled out unaffiliated and marked Republican. On the redacted form which was presented to Mr. Macfarlane it shows that a word which was redacted run into the democratic box but was not marked at all.

Attorney Waddingham requested a short recess so that he could get some answers on a few questions and further research the statutes.

Commissioner Withers made a motion to recess the canvass.

Commissioner Smith SECONDED the motion. The voting was unanimous and the motion carried. The canvass recessed at 12:47 p.m..

Commissioner Smith made a motion to recess commission meeting.

Commissioner Withers SECONDED the motion. The voting was unanimous and the motion carried. The meeting recessed at 12:48 p.m..

Commissioner Withers made a motion to reconvene commission meeting.

Commissioner Smith SECONDED the motion. The voting was unanimous and the motion carried. The meeting reconvened at 2:04 p.m..

Commissioner Smith made a motion to reconvene the Board of Canvassers.

Commissioner Withers SECONDED the motion. The voting was unanimous and the motion carried. The Board of Canvassers reconvened at 2:05 p.m..

Attorney Waddingham said that during the recess he and Clerk Brunson spoke with the Lieutenant Governor's Office and discussed the various statutes involved. He asked Clerk Brunson to explain the provisional ballots and the three ballots that were counted. He questioned the

additional six ballots that Mr. Macfarlane is challenging. Mr. Macfarlane said that he provided a list of five specific ballots with the group of the provisional ballots.

Attorney Waddingham said based on those issues he asked Clerk Brunson to explain why those ballots were counted.

Mr. Macfarlane said that it is unclear exactly what authority the Board of Canvassers has, but there is not as much question as to how much authority the County Clerk has. He said that based on his assumptions, the Clerk has the authority to review absentee ballots. Some were rejected which she mentioned this morning. He said that he feels that she has the authority to exclude the ballots that he is challenging.

Attorney Waddingham said that he agrees that Clerk Brunson has to make a judgement call sometimes, which is part of the process. Her training included counting all possible votes because of the voter's intent.

Clerk Brunson explained that the provisional ballots were given for the right reasons. Those voters did their duty and they were verified to be eligible for counting. She said to exclude those would take away the voters constitutional right to vote. She said that the provisional ballots that were counted were because they were eligible to be counted.

Mr. Macfarlane explained that the only reason why they are contesting the provisional ballots is because they were not disclosed to the public before 5:00 p.m. the following day. He questioned why statutory procedure was not followed.

Attorney Waddingham explained that based on the conversation with the Lieutenant Governor's Office and Clerk Brunson's explanation, dealing with the constitutional right to vote, Clerk Brunson has explained that she wants to allow them that right by giving the voters the benefit of the doubt. He said unless the Board of Canvassers or Clerk Brunson sees otherwise, that is another issue.

Mr. Macfarlane said that he agrees that the right to vote is a constitutional right. He said that is why there are laws that spell out the procedure and the requirement. He said that those laws are there for accountability to help protect against situations such as this. He asked about the provisional ballots that have been rumored to have just appeared a week later.

Clerk Brunson explained that the provisional ballots are brought in the night of the election, in what are called tubs, from the precincts and were available in her office the entire time. If anyone would have asked about the provisional ballots they would have been told that they would be opened and counted the day of the canvass.

Mr. Macfarlane said that he had made GRAMA requests and was given a printout dated Thursday, June 26, 2014 which showed there were zero provisional ballots. He said that he questioned if there were anymore ballots unaccounted for. He said that he was showed a mail in ballot from Garrison and was told that it would be counted.

He said that he never heard anything about provisional ballots until the canvass. He said that it was explained to him that the provisional ballots were in the tubs and were pulled out and counted the day of the canvass. He said that he is not saying that anyone did anything intentionally.

Clerk Brunson said that they discussed the provisional ballots with the Lieutenant Governor's Office and they felt that the way she handled them was sufficient. She said that she felt good about the call and she feels good about the provisional ballots.

Mr. Macfarlane said that he still has not heard an explanation as to why procedure was not followed.

Mr. Macfarlane again asked why the procedure was not followed. Clerk Brunson said that was something that she did not follow through with but they were in her office and were processed legally. She said that they are removed from the tubs and are left in the office to be counted the day of the canvass and through conversations with the Lieutenants Governor's Office she understands that they felt that she complied by going with the voter's intent.

Clerk Brunson explained that she went with the voter's intent and therefore counted the ballots of Judy Noland, Kim Kearsley, Aubrey Woodard, Gary Harris and Ann Dziuk. In regards to Florence Malohifoou it was explained that she was a permanent absentee voter but was missed when sending out absentee ballots. Ms. Malohifoou called and requested her ballot and one was sent to her at that time. Mr. Macfarlane said that there is statutory provisions that apply to the situation of Ms. Malohifoou. He said that she had the option to go to the polls and cast her ballot.

Mr. Macfarlane gave his reasoning for challenging the ballots of Judy Noland (signed in the wrong place), Ann Dziuk (voted only school board on a Republican Ballot), Gary Harris (was only to show voter intent), Aubrey Woodard (scribbled out Unaffiliated and half marked Democratic and fully marked Republican). It was explained to Mr. Macfarlane that the non redacted form of Aubrey Woodard shows that a word that was redacted fell into the Democratic box, therefore she did not mark Democratic at all. He also discussed Kim Kearsley (marked both Unaffiliated and Republican). Clerk Brunson explained that this was a closed Republican Primary and by him/her filling out a form and marking Republican the Clerk's Office took his intent as wanting to vote the Republican ballot.

Mr. Macfarlane said that there probably were a lot of people who would like to have that much leeway in this election. He said that he does not see any justification in this form and said that the Clerk's Office is just going to speculate and predetermine the election and are going to do its darndest to make that happen. Attorney Waddingham asked Mr. Macfarlane if he was accusing the Clerk's Office of predetermining the outcome of the election. Mr. Macfarlane did not respond.

Deputy Clerk Rowley explained that the form in question was delivered to the Clerk's Office the night of the election in the returns from the precincts. At this point the Clerk's Office can only determine whether or not this voter could be given credit for voting, but cannot exclude the ballot since it was cast on the machine the night of the election.

Clerk Brunson said that she has gone through each document that has been challenged and were brought before the Board of Canvassers today and she believes that she has answered his questions to the best of her ability. She said that she disclosed to him and everyone else that there were three ballots that she felt should not have been counted because they voted too late in office. Mr. Macfarlane said that he has six more challenges that he feels will make a legitimate case.

John Pratt said that he hates to admit that he did not vote in the election, because he was previously registered in Iron County and moved to Millard County. He did not realize that the law states that you cannot change your address 15 days before the election until it was less than 15 days before the election, so he did not try to do something that goes against the law. He suggested to let the people decide by having both candidates on the ballot again.

Commissioner Roper said that obviously Clerk Brunson has received training and the leeway she is given is to take the voter's intent.

Ben Pratt said that he feels that this falls into the same reasoning as if he were to speed through town and get pulled over. Even though it may be a super good reason the law says otherwise

and you have to obey the law.

Mr. Maxfield said that he agrees with the Clerk on the provisional ballots, that just because they were not disclosed, does not mean they should not be able to vote. He said that each voter has the right to be treated the same. He said that when he and his wife went into the Clerk's Office to early vote they were told that if they chose to affiliate then the form would need to be completely filled out or it would not count.

Mr. Macfarlane said that it is very clear that the registration forms need to be filled out completely and accurately. He discussed Judy Noland's registration form not being signed in the appropriate place.

Commissioner Roper said that his thought is that if the Clerk's Office has given the instruction to go with the voter's intent than he thinks that they are fine and we should move forward. Clerk Brunson said that her office has taken the voter's intent all along.

Mr. Macfarlane said that he wants to see in black and white that the Clerk's Office can take the voter's intent. Attorney Waddingham asked if Mr. Macfarlane could show him where it is in black and white where it says that she cannot.

Mr. Macfarlane said that he does not know where it says it in the law book, but feels that if they are claiming to rely on that then he wants to see where it says it.

Attorney Waddingham asked if Mr. Macfarlane could show him in the election law where it is addressed. Clerk Brunson has received training and that is what she is going by.

It was explained that in regards to Ms. Noland's registration form, it was a party affiliation change not a new registration. The original registration which is completely filled out is on file at the Clerk's Office.

Mr. Maxfield said that Mr. Macfarlane has stated his objections on the record and Clerk Brunson has stated why she has used her discretion and he feels that the Board of Canvassers should use its discretion and continue with the canvass.

Attorney Waddingham suggested that the Board make a decision on the canvass. He said that it has been presented and Clerk Brunson has given her explanation and now the Board needs to act.

Wendy Leatham questioned if there is a law that states that the polls need to close at a certain time. Clerk Brunson said that the polls are open from 7:00 a.m. to 8:00 p.m.. Ms. Leatham said that she had to work late and did not make it in time to vote before the polls closed and was not allowed to vote. She questioned which statute the Clerk's Office chooses to follow and which they choose not to follow. Clerk Brunson said that if Ms. Leatham was in line to vote before 8:00 p.m. she would have been allowed to vote.

Commissioner Smith said based on the information presented to the Board of Canvassers that the Millard County Clerk has presented as a recount for Commission Seat A, the total votes were 1014 for James I. Withers and 1009 votes for Jim Dyer. He said that the Clerk indicated that there were three ballots that did not meet the requirements. Clerk Brunson clarified that the three ballots that she disclosed were voted in office after the absentee deadline. She did not catch that this had happened until she reviewed the absentee voter register book. The ballots were processed with the other absentee ballots the night of the election and there is no way of determining how they voted.

Commissioner Smith made a motion to declare James I. Withers as being nominated as

receiving the highest number of votes for Commission Seat A for the Republican Party for the Primary Election, based on the information placed before the Board and accepting the explanation and the challenges.

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

Mr. Macfarlane questioned whether Commissioner Withers could second the motion or vote due to a conflict of interest. Attorney Waddingham said that Commissioner Withers is on the Board of Canvassers and is running for an election. He said that it does not bother him if Commissioner Roper would like to step from the chair and second the motion, but he sees nothing wrong with it. He said that Commissioner Withers is a member of the Board of Canvassers and the statute is quite clear that the Commissioners serve as the Board of Canvassers. It is also clear that as long as they are in the meeting they have to serve as a the Board of Canvassers. He said that if they are gone then the statute gives a succession of who sits to replace the commissioner. There is nothing in the statute that says that it has to be unanimous if Commissioner Withers does not want to vote.

Based on Mr. Macfarlane's concerns of conflict of interest Commissioner Withers withdrew his second.

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

Commissioner Smith made a motion to close the Board of Canvassers.

Commissioner Withers SECONDED the motion. The voting was unanimous and the motion carried. The Board of Canvassers ended at 3:03 p.m..

The regular meeting reconvened.

WHERE UPON THE MEETING ADJOURNED

Commissioner Withers made a motion to adjourn the meeting.

Commissioner Smith SECONDED the motion. The voting was unanimous and the meeting adjourned at 3:05 p.m..

Attest: _____

Approved: _____