

YUMA COUNTY COMMISSIONERS
September 16, 2013

Minutes¹

At 8 a.m., the Yuma County Board of Commissioners met in regular session on the 16th of September, 2013 with Chairman Robin Wiley, Commissioners Dean Wingfield and Trent Bushner present.

Administrator Linda Briggs was present throughout the day.

The commissioners reviewed meetings that each attended within the last two weeks.

Health and Human Services -

The commissioners conducted business with Dave Henson, Director of the Department of Health and Human Services. Also present: Phyllis Williams, Dalene Rogers.

Road & Bridge -

In attendance from the Road and Bridge Department were: Supervisor Mark Shaw and Truck/Mining Foreman Howard McGinnis. Road and Bridge personnel updated the commissioners on road department activities.

The following were discussed:

- Shaw presented a draft letter, to the Armel house previous renters (Pieper Electric), indicating the repairs and clean-up that needed done in order to receive their damage deposit.
- Due to fall weather being questionable for doing cement work, the Kamala Road project will be postponed until spring. Another reason for the delay, is the railroad has not yet worked on their approach. It would be best if that were installed prior to the road project.
- Mowing of the county roads continues and the rental tractors have reached the maximum hours. The commissioners asked that get a rental cost amount for 2014 and ask all implement companies within the county if they will rent the county tractors at the same rate.
- The commissioners noted the roads they have traveled that needed attention.
- The John Deere Grader should be delivered soon.

CSU Golden Plains Extension –

At 10:00 am, the commissioners joined a phone conference call initiated by Bill Nobles, Regional Director of CSU Golden Plains Extension, for the purpose of discussing applications received for the open livestock position.

Treasurer's Report -

Dee Ann Stults presented the Treasurer's Report for the month of August, 2013. There were \$253,355.04 in taxes collected, and \$26,838.17 in fees collected. 99% of the taxes have been collected. The delinquent mobile home and personal property will be in the paper this week.

One property leasee has not paid possessory interest for the last 4 years. A letter will be sent informing the property owner of the possessory interest due to Yuma County.

Chairman Wiley signed the third-quarter Public Trustee Request for wages in the amount of \$3,125.00.

Electricians will be here October 14th to install the electrical in the floor of her office.

¹ These minutes prepared by Linda Briggs are summarized discussions, not verbatim.

Liquor License -

Nancy Wright presented a liquor license. Chairman Wiley signed the license for Ballyneal Golf LTD dba Ballyneal. The application had been approved on July 15, 2013.

Richard Birnie -

Richard Birnie, GIS Coordinator, presented and reviewed the 2014 budget for operations of the GIS.

Gary Earl -

Gary Earl said he is here to appeal the board's decision of August 15th. Other property owners, adjacent to the Banister property, turned down requests for public access to the Banister Wildlife Easement. Earl's wish is to close the road through his property as it splits his winter pasture. The commissioners said they understood his position but could not support his request to close the road.

Attorney Barbara Green –

Attorney Barbara Green met with the commissioners to discuss the Land Use Application from Invenergy. **Commissioner Bushner moved to enter into executive session with Attorney Barbara Green under CRS 24-6-402(4)(b) allowing attorney client privilege discussions on legal matters. Commissioner Wingfield seconded the motion, which passed by unanimous vote.** At 1:10 p.m., Commissioners Wingfield, Wiley, and Bushner with Attorney Barbara Green and County Administrator Linda Briggs entered into executive session. Through a duly made motion executive session ended at approximately 1:35 p.m.

Land Use –

At 2:00 p.m., Chairman Wiley opened the public hearing continued from August 30, 2013 to accept public comment on the request from Invenergy Wind Development LLC, on behalf of Wray Wind Energy LLC., to construct a wind farm consisting of 56 turbines north of Laird.

Present:

Attorney Barbara Green, Yuma County Administrator Linda Briggs, Road and Bridge Supervisor Mark Shaw and Truck/Mining Foreman Howard McGinnis, Administration Clerk Laurie Clemons, James Williams and Barbara Mueller of Invenergy, Terry Hall of Y-W by phone, Dennis Coryell and Deb Daniels of RRWCD, and William E. Cure.

Chairman Wiley asked Administrator Briggs for her report.

Briggs said the staff report now consists of 37 pages. The commissioners have this document. The summary of conditions was handed out along with the index for Article 5 of the Land Use Code; which lists the Standards and Criteria. Briggs stated that the application was reviewed and applied to the standards in the code. The Summary of Conditions are requirements for the application to meet the code requirements. Briggs is handing these out to everyone satisfies the criteria for the hearing. (The staff report which contains the Summary of Conditions is attached.)

At the request of Chairman Wiley, everyone introduced themselves.

Jim Williams stated that Invenergy was pleased to work with the county on the Summary of Conditions. He feels like the summary before the commissioners represents a good compromise between the county and Invenergy. Williams thanked everyone for their time and expressed that Invenergy is ready to move forward.

Dennis Coryell, representative from RRWCD, stated the Republican River Water Conservation District had entered into an agreement with Invenergy without knowing about the minimum setbacks in the Yuma County Land

Use Code. Coryell requested that the agreement previously made with RRWCD and Invenergy be amended to coincide with the county setback. On page 66 of the land use code, a minimum setback distance from the wind turbine is, "2 times the height of the turbine's structure." Coryell was concerned about the agreements 200-foot setback not complying with the county's land use code. Coryell requested Invenergy amend the agreement with RRWCD to align with the county's setback standards. Chairman Wiley accepted a phone call from Terry Hall, representing Y-W Electric, to join the hearing.

Barbara Green explained to the commissioners that the land use code standards supersede Condition U between the RRWCD and Invenergy, but there is a discretionary clause that allows a waiver. The commissioners asked Mr. Williams why the condition listed 200 feet as the setback distance, and for Invenergy's opinion about revising the condition's language.

James Williams stated that the condition deals with above-ground facilities, not below. Invenergy wants to start building while still looking out for the RRWCD easements and 200 feet seems like an acceptable distance away from surface structures to do that. Invenergy is uncertain how the land use code's setbacks apply to the RRWCD as the code describes the setback's application to roads and right-of-ways. According to Mr. Williams, when the setback is expanded to match the code, the dimensions on either side of the pipeline become 800 feet per side. This becomes 1600 feet of non-developable land for Invenergy, so Invenergy feels the 200 feet is more appropriate, and the, "2 times the height," setback doesn't actually apply to the RRWCD facilities.

Barbara Muller affirmed that the setbacks apply to certain types of public above-ground features like: "Public power lines, public roads, highways, inhabited structures, schools, hospitals, churches, and general boundaries," (p. 66, Yuma County Land Use Code, 2011). This was why Invenergy perceived the below-ground features are different from the land use code's setback requirements.

Williams asked where the underground features appear. Dennis Coryell explained that the underground pipelines located at the South near the river are fine. RRWCD's concern is with the above-ground structures, like control buildings, collection tanks, and well houses. RRWCD would prefer Invenergy comply with the county setback code for surface structures.

The commissioners verified that RRWCD's concern was not the setbacks to the pipelines, but the above-ground structures; which Coryell confirmed. Wingfield asked if this would impact where some of Invenergy's structures would be placed. Williams explained that he thought it could. While no turbines would be placed within the pivots, he was uncertain how Invenergy's layout would be affected. Deb Daniels and Williams reviewed the map of RRWCD features together and agreed that there were only a few surface features impacted; which could be resolved by working together.

The commissioners asked Williams if Invenergy wanted the setbacks to be 2 times the height of the turbines, and Mr. Williams said, "Yes." Barbara Green asked if RRWCD owns easements and could agreements be made using easements as property lines. The commissioners and Green agreed this could be resolved as there were only two or three surface features affected.

Chairman Wiley asked for any additional public commentary, and then asked the commissioners for input. Bushner requested Invenergy speak to the large volume of information that is being shifted to the activity notice. Williams explained that they will be submitting paperwork as the general contractor mobilizes the site. He stated Invenergy was fine providing the large amount of information. Bushner added that the language about Western Area Power Administration being the connector should be changed to, "Transmission owner," to give greater flexibility and options, and Mr. Williams agreed.

Commissioner Wingfield asked what the height to the top of the structure would be. James Williams said, "425 feet," and Commissioner Wingfield confirmed that a setback would be 850 feet. Wiley asked about Condition T and if Invenergy had a power purchase agreement yet, to which Mr. Williams responded that they do not have a power purchase agreement.

Wiley asked if Invenergy had either an interconnection agreement, or a power purchase plan, and pointed out that under Condition T, Invenergy has to have either one, or both. Williams respectfully disagreed and asked that the verbiage remain as it is currently. From his perspective, adding another layer, like the power purchase agreement, is something Williams expects to have in hand to move the project forward, but he would prefer not to add the language as a contingency. Williams was certain Invenergy wouldn't make the investment without confidence in the project's success and an off-taker agreement in place.

Commissioner Wiley asked why the condition was an issue. Williams re-asserted that, from their view, moving the project forward was critical even if a power purchase agreement was not in place currently. Wiley explained that this is what the condition was for-- covering the need to build and move the project forward without a power purchase agreement in place. Williams requested a suggestion for changes from the commissioners. Wiley responded that if Invenergy could not execute an interconnectivity agreement or power purchase agreement, then they would bond for the portion of the project they would be building. If Invenergy walked away from the project bonding would be in place to start reclamation. Williams pointed out this appeared to add less flexibility to the project. Wiley explained that the inflexible point was if Invenergy decided to walk away from the project; the county and land owner were protected. Putting bonding in place allowed the reclamation plan to go into effect, if necessary. Wingfield and Bushner affirmed that the only significant change was adding the power purchase agreement into the wording.

Barbara Green asked for clarification from the commissioners that if neither the interconnection agreement, nor the power purchase would be in place, then the bond requirement would go into effect. If one of those two requirements didn't happen, then the county would want to know how much construction has started to assist Invenergy with bonding for the right amount. Green agreed to refine the language on Condition T.

Williams asked if the suggestion was to provide an interconnection agreement or power purchase agreement with the activity notice. Wingfield affirmed that Invenergy would pay for whatever portion they wanted to build. Green and James Williams discussed correcting the language of "Interconnection agreement," and "Power purchase agreement." Commission Wiley asked if there were additional comments from anyone. Terry Hall, of Y-W, expressed he sees the language of interconnection agreement giving Invenergy more flexibility and he encouraged Invenergy to apply for an interconnection agreement with Tri-State.

Wiley asked for any other questions or comments. Briggs asked for an update on the road agreement. Williams explained he needed to talk more with Mark Shaw. There is a work in progress, but the timeline needs adjustment, and the permit's language needs refinement before submitting it to the board and Attorney Green for final approval.

Green instructed Williams to submit a copy to her at the same time as the commissioners for evaluation, and explained to the commissioners there was no need to hold a hearing on it, simply list it for a meeting as an agenda item.

Commissioner Wiley asked for any additional questions; when there were none, he closed the public hearing at 2:30 p.m. and the commissioners began their deliberation. Chairman Wiley read each of the Standards from Article five of the Land Use Code and asked if the conditions satisfied the standard. Some of the conditions relating to the standards were discussed but Commissioners Bushner and Wingfield verbally responded favorably to each standard. During the discussion period two of the conditions were modified.

Following are the standards read by Chairman Wiley:

Section 5-101: GENERAL STANDARDS

- A. Compatibility
- B. Roadways and Access
- C. Compliance with Comprehensive Plan and Intergovernmental Agreements
- D. Water and Wastewater Service
- E. Service Delivery System Capacity
- F. Erosion

Section 5-102: RESOURCE AND ENVIRONMENTAL PROTECTION STANDARDS

- A. Water Quality Protection
- B. Visual Impacts
- C. Air Quality
- D. Wildlife
- E. Glare, Dust, Odor or Noise
- F. Important Areas
- G. Recreation Impacts
- H. Drainage / Stormwater Run-off
- I. Protection of Agricultural Lands

Section 5-103: SITE DEVELOPMENT STANDARDS

- A. General Site Planning Standards
- B. Structural Location Standards
- C. Lot Size
- D. Height Restrictions
- E. Setbacks from Site Boundaries

Section 5-104: ADDITIONAL STANDARDS FOR CERTAIN USES

- A. Additional Standards for Commercial and Industrial Uses
- D. Additional Standards Applicable to Utilities
- I. Additional Standards for Wind Energy Facility

The commissioners directed staff to re-write section "T," in the Summary of Conditions to state both the interconnect agreement and power purchase agreement should be provided with the activity notice and to re-write section "U," so it states that the turbines are to be 1500 feet from RRWCD well houses, wells, and storage tanks.

Chairman Wiley closed the public hearing at 2:46 p.m. **Commissioner Bushner moved to approve Invenergy's application with the conditions presented including the revisions to "T" and "U." Commissioner Wingfield seconded the motion, and the vote passed unanimously.**

The commissioners thanked the administrative staff and the planning commission for their diligence with this matter.

Board Appointments –

Commissioner Bushner made the motion to reappoint Kim Latoski, Rick Riley, and Leslie Laird to the Yuma County Fair Board. Commissioner Wingfield seconded the motion, which passed unanimously. These appointments will expire on September 1, 2016.

Commissioner Wingfield moved to reappoint Byron Weathers to the Republican River Water Conservation District Board. Commissioner Bushner seconded the motion. The motion passed by unanimous vote. This appointment will expire on the second Thursday in October of 2016.

Administrator's Report -

Administrator Linda Briggs reviewed calls, correspondence, and presented the following for action:

Commissioner Wingfield moved to approve the minutes of July 31, 2013. Commissioner Bushner seconded the motion, which passed unanimously.

Certification of Accounts Payable for September 16, 2013, drawn on Yuma County Funds, with check #54844 through #54967 totaling the sum of \$314,724.46; and Fund 16 W-Y Combined Communications check #6694 through #6707, totaling the sum of \$6,196.32 were approved and signed by Chairman Robin Wiley.

Commissioner Wingfield moved to sign the grant agreement with the State of Colorado Department of Public Safety Division of Homeland Security and Emergency Management to receive up to \$19,300, from 10/1/2012 through 6/30/2014, to assist in financing Yuma County's Emergency Management operations. Commissioner Bushner seconded the motion which passed unanimously.

Commissioners signed a check for \$ 15.82 – July and August interest accrued on the FPNB Accounts Payable account to be deposited in the general fund. Commissioners signed a check for \$ 1502.92 for CCOERA forfeiture funds to be deposited in the general fund.

There being no further business, the meeting was adjourned at 5:00 p.m.

The next meeting of the board will be September 30 and October 15, 2013.

Robin Wiley, Chairman

Linda Briggs, Administrator

ATTEST: _____
Beverly Wenger, County Clerk