



## LINCOLN COUNTY BOARD OF COMMISSIONERS

December 7, 2015  
Commission Chambers  
Lincoln County Courthouse  
181 Main Street  
Pioche, Nevada

### Commissioners

Paul Mathews  
Kevin Phillips, Chair  
Adam Katschke, Vice Chair  
Paul Donohue  
Varlin Higbee

### **#1-CALL TO ORDER/ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE**

Kevin called the meeting to order at 9:06 a.m. Clerk Lisa Lloyd called the roll.

PRESENT: PAUL DONOHUE  
ADAM KATSCHKE  
KEVIN PHILLIPS  
PAUL MATHEWS  
VARLIN HIGBEE

LISA LLOYD, Clerk  
DANIEL HOOGE, District Attorney

There is a quorum present and the agenda was posted on 12-01-15. The Invocation was offered by Adam and Paul M. led the Pledge of Allegiance.

### **#2-PUBLIC COMMENT**

Kevin called for public comment. None offered.

### **CONSENT AGENDA**

#3 Approve/Deny minutes of the November 16.

#4 Approve/Deny original and renewed business licenses according to staff recommendations (an itemized list of business licenses is available for public review in the Building Department prior to the meeting).

**Adam made a motion to approve the consent agenda; seconded by Paul D. All voted in favor.**

### **#5-VOUCHERS**

Recorder/Auditor Leslie Boucher presented the cash balance report. General County has a balance of \$1,366,513.82 with estimated expenditures being \$181,302.13. General County will have a balance of \$1,185,211.69. The resolution was sent for the movement of the money into the new fund. The money won't be moved until the resolution is approved by NV Department of Taxation. **Adam made a motion to approve the vouchers as presented with the exception of the LCTS, Mainstreet Market, and Mountain Merc vouchers; seconded by Paul D. All voted in favor. Adam made a motion to approve the LCTS vouchers; seconded by Varlin. Paul D. disclosed he is an employee of the telephone company; he abstained. Motion carried. Adam made a motion to approve the Mountain Merc vouchers; seconded by Paul D. Kevin disclosed that he is part owner of the Merc; he abstained. Motion carried. Paul M. made a motion to approve the Mainstreet Market vouchers; seconded by Varlin. Adam disclosed he is part owner of the store; he abstained. Motion carried.**

### **#6-OFFICER/DEPARTMENT HEAD REPORTS**

**TREASURER** Shawn Frehner presented the monthly report. \$1,531,612.19 is the amount collected for this past month. **SENIOR NUTRITION/TRANSPORTATION** Director Toni Acuff advised that they are getting a new bus after the first part of the year. Toni advised that her employees are asking to use their floating holiday for Christmas Eve. There will be enough for extra meals for those who are homebound. Daniel advised that everyone receives a full floating holiday but those who are under the collective bargaining agreements also have half of Christmas Eve off. The non-union employees technically don't have part of Christmas Eve off. The Board agreed that Toni's employees can use their floating holiday if they'd like. Toni will need to replace a driver. **PLANNING/BUILDING DIRECTOR** Cory Lytle advised the Sage Brush Ecosystem Council meets this

week. Cory has been in contact with Sheila Anderson, who is on the Governor's sage grouse and natural resource team. Sheila has requested some of our map overlays and disposals relative to sage grouse. They're looking at the USGS maps and NDOW data in order to revise some of the maps that came out. Cory met with Bevan last Friday to discuss it. Kevin asked that Cory communicate these things to Tori Sundheim at NACO. Cory met with NDOT on 11-17 at the annual workshop; he presented documentation concerning the meeting and upcoming projects. Cory presented copies of the RFP for the restroom addition at the Courthouse. Only one firm replied; SH Architects from Las Vegas. John Anderson from SH came up last week and did a walk through. If we want to enter into a contract with SH we need to do that within the next few weeks. The probable cost estimate is approximately \$450 per square foot. Total complete project is estimated to be over \$800,000. John is supposed to be sending another proposal.

#### **#7-HIGHWAY COMMISSION**

This item was handled under a separate agenda.

#### **#8-LINCOLN COUNTY FIRE DISTRICT**

This item was covered under a separate agenda.

#### **#9-LINCOLN COUNTY SOUTHEASTERN HABITAT CONSERVATION GENERAL IMPROVEMENT DISTRICT**

This item was covered under a separate agenda.

#### **#10-MEADOW VALLEY WASH**

Adam attended the MV Wash meeting last week. Discussion was held concerning the cleaning out of the wash. Caliente has reached out to NDOT several times to have them clean out their end of the bridge. NDOT has made no effort to do anything so Caliente has asked the Board to write a letter. Caliente claims there is at least 8 feet of silt in that area. The mud blocked the lower crossing at one point while, simultaneously, the train blocked the upper crossing. The flood season is coming up. Mayor Stana Hurlbert stated that NDOT has responded that they probably won't get to the cleanout until after January. From now until the end of January is the traditional flood season in this area. Stana advised that Caliente has spent \$18,000 from their budget and they've done everything they can do. NDOT promised they'd have someone in there by November 1<sup>st</sup> but nothing has been done to date. Caliente isn't on NDOT's priority list. Adam and Jerry Carter talked about this; the City has felt responsible for cleaning the wash for a long time but a portion of the wash is private property. The City cleaned out this section and was then told by the private property owner they wanted the wash put back the way it was. There is a very large problem. The City stopped all work. Caliente is looking for direction from the Board as to what should be done. Varlin suggested that the private person be sent a bill; the property was cleaned out as this was a safety issue. There is an issue to get permits for the private property owners. Varlin suggested that a district be formed and then the property owners can be charged. Ronda Hornbeck advised that one of the reasons they were able to clean the wash is because they received a Section 10 permit. If the individual parties applied it could take as long as ten years for them to receive the permit. When the bridge was threatened several years ago, NDOT came overnight and cleaned their section immediately. Kevin believes the Board should write a letter and asked that Adam and Denice formulate the letter. There was some discussion as to how aggressive the letter should be. The draft letter wasn't aggressive but Adam would like to add some facts concerning EMS. Varlin suggested that it would be more effective if a couple of the Commissioners and Mayor Hurlbert scheduled a meeting with NDOT in Las Vegas. Varlin will coordinate this meeting. Adam will draft a letter and the Commissioners/Mayor will meet with NDOT. No action was taken on this item.

#### **#11-MEALS ON WHEELS**

**Paul M. made a motion to approve the advertisement and hiring of a Meals on Wheels driver; seconded by Adam. All voted in favor.**

#### **#12-SAGE GROUSE IMPLEMENTATION RULE LAWSUIT**

Kevin advised that every time he attends NACO they ask what LC can do with regards to financial help with the implementation of the sage grouse rule. Daniel advised that NACO is asking for \$10,000. Nye County is contributing \$1,000. Kevin didn't make any commitments to NACO. Varlin commented that LC Regional

Development has done nothing in 30 years; they haven't brought one job into LC. Why are we still pouring money into them? Paul D. responded they've done some hoop houses, so we can't say they've not brought one job. Paul D. stated the sage grouse issue is a problem that will continue to grow; we need to find funds to contribute. Paul M. commented that almost all of the money we've budgeted is committed. Once the audits are completed we will see if there is any money for augmentations. Until the audit is complete, we don't know how much we can contribute. The only money available is the Area money, which is in limbo because it's being moved into the new account. Paul M. suggested we could make a commitment but not come up with the funding until a later date. Paul D. stated our answer could be "yes" and we can let them know in January. Paul M. feels \$10,000 is reasonable but we can't do it right now. **Paul D. made a motion to approve the contribution of \$10,000 to help with the lawsuit but payment can only be made after the audit/augmentation and whether or not we have the amount to spend; seconded by Paul M.** Paul M. asked if there is a legal issue with the Board spending tax payer money on a lawsuit like this. Does this require different types of funds? Daniel responded that it requires a public purpose, which this does. Daniel commented that this will directly affect specific individuals and businesses, which will, in turn, affect the entire County. BLM is taking 25% of the County via the sage grouse implementation rule.

### **#13-HARDY CONSTRUCTION LAWSUIT**

This item concerned discussion regarding the possible appeal of Judge Gary D. Fairman's order confirming an arbitration award in favor of Hardy Construction as well as the discussion of options for payment of said order. Daniel filed a Notice of Appeal last week. If the Board doesn't want to appeal it is a simple matter of paperwork to rescind. The award was for over \$700,000 and there is an outstanding motion for additional fees. Interest is ongoing. If the Board appeals, there is a chance to get the arbitrator's award set aside. Daniel feels confident that there is no other arbitrator in the world that would give such an award. Apparently you can't force them to stick to their agreement without violating our agreement. They promised us they could do the rock with no additional time and within a certain amount of time but Judge Fairman said, after four months, when they saw they were losing money we were required to change our price and we weren't allowed to stick to our date of completion or price. If there is a change order that goes above 20% they have an unlimited right of readjustment. **Paul D. made a motion to continue with the appeal. Motion dies for lack of second.** Daniel stated this will cost the County \$50,000 per year in interest and attorney's fees if we lose. If we win, the County pays nothing. This is a gamble. Paul M. asked what the appeal is based on. Daniel responded that the biggest issue is that the Judge interpreted the law wrong; that law is for contract change orders that are not negotiated. It's fairly common in construction contracts for the government to order changes. Changes are ordered and the government is then required to pay for the changes, which we did. All of the changes are in writing. The second issue is that Hardy had seven days to tell us they wanted to go to arbitration. We gave them a change order in April. From April to the middle of August, Tyler Mason promised multiple times he would complete on time and under budget. Tyler left in August. A new superintendent came on and he told the County they couldn't finish on time and that they needed more money. Judge Fairman ordered that four months is enough and that they didn't have to do it within 7 days. It's a tough sell to appeal an arbitration decision. Paul D. commented that arbitrators will never side with a government entity; this is common knowledge. If the County doesn't appeal this within 30 days we can never appeal. Adam feels we need to pay the bill versus appealing. Paul D. asked if the County can counter-sue to get our money back. Daniel responded we have already counter-sued and we settled for \$25,000. There are other litigation routes we can go, including fraud. Adam stated we need to use the Area money to pay this lawsuit; he doesn't believe the County can win an appeal. Paul M. asked why the County ended up "holding the bag" on this. Kevin suggested that an attorney-client meeting be held that involves the City of Caliente attorney and Mayor as well as the Commissioners and Daniel. Ronda asked if we settle will this open a bag of worms for any future contract the County may hold. Daniel stated that the ruling from the Court was that any time a change order is signed and it's 20% and above more then they can, at any time, come and ask for more time and money. Once you hit 20%, the contract is basically void and they can ask for more. Daniel discussed the cost-plus method. The costs for Hardy were almost double the highest bid. **Paul D. made a motion to move forward with the appeal and to keep a close eye on it; seconded by Paul M. All voted in favor.**

### **#14-BEDROC LLC/WESTERN ELITE**

This item concerned the review of the landfill and host agreement with Bedroc LLC/Western Elite (BR). The proposed action is to extend the term of the landfill agreement but include a four-year review or increase to the

host fees charged. The current contract provides that LC could close the landfill in four years. This item was tabled and no action was taken.

#### **#15-2016 LANDFILL FEES**

This item concerned the amount of landfill fees to be billed to LC residents for 2016. Paul M. stated he understands that the fee stays the same this year. The Board agreed to keep the rate the same for 2016 in the amount of \$212. **Paul M. made a motion to not increase the fee to the citizens and leave it at \$212; seconded by Paul D. All voted in favor.**

#### **#16-FUND CERTIFICATION LETTER TO US DEPARTMENT OF ENERGY**

**Paul M. made a motion to approve the fund certification letter to the US Department of Energy for federal fiscal year 2015; seconded by Paul D. All voted in favor.**

#### **#17-COMMUNITY DEVELOPMENT BLOCK GRANT**

This was the time and place set for public hearing to discuss and select projects from submitted applications in which the County will participate in partnership with the US Department of Housing and Urban Development Community Development Block Grant as administered by the Governor's Office of Economic Development. Paul D. visited with the Pioche Senior Citizens; who provided him a list of things that could be considered, including the parking lot that slopes toward the building. When it rains, the moisture goes towards the building. Panaca Senior Center needs a new parking lot; they currently have dirt which becomes mud when there is moisture. Paul D. suggested that the Pioche Senior Center and the Alamo projects be put forward. **Paul D. made a motion to put the Alamo flood project and Pioche Senior Center project forward for CDBG; seconded by Varlin. All voted in favor.**

#### **#18-COMMISSIONER REPORTS**

**COMMISSIONER PAUL MATHEWS** attended the Tri-County Weed meeting last week. **COMMISSIONER VARLIN HIGBEE** attended meetings in New Orleans concerning nuclear waste. Varlin also attended the Western Legislative Caucus. **COMMISSIONER KEVIN PHILLIPS** provided documentation for each Commissioner concerning the recommendations of those on the NACO board regarding UNCE and UNR. **COMMISSIONER ADAM KATSCHKE** attended the Meadow Valley Wash meeting. **COMMISSIONER PAUL DONOHUE** met with Caliente and Sunrise Engineering. Narconon was purchased by an international organization called ABLE. ABLE has opened up 50 more Narconon programs worldwide. ABLE invested quite a bit of money in the Caliente facility. There was a ribbon cutting ceremony this last Saturday that Paul D. attended as a representative of the Commission.

#### **#19-PUBLIC COMMENT**

Kevin called for public comment. Carol White asked the Board if they intend to automatically renew Ashley Hall's contract for possessory use taxes that expires this month. Kevin responded that this is the time for public comment and asked Carol to state her comments. Carol disagrees if the contract is extended automatically for the same reasons she had in January. Carol read the article about the senior housing that was in the newspaper last week. The article states that this company is asking the County to support them in not paying their taxes. If this company isn't able to pay their property taxes, how did they qualify to purchase and operate these properties? The picture that accompanied the article in the newspaper wasn't even of the senior housing. Toni Acuff has advised that she will not be advertising or hiring a new meals driver. The driver that was going to quit has changed plans and will stay. Connie Simkins advised there was a meeting of the NV Commission on nuclear projects last Thursday. Last Wednesday, 12-2, Dr. Baughman participated in a teleconference call concerning the Dry Lake Valley Solar Energy Zone last week. Connie presented information concerning sage grouse; the Governor sat down with Secretary Sally Jewell. With regards to the Baker water tank, Secretary Jewell committed to use NV's maps for project-level decisions. We are going into a new conservation credit system that will give us credit for mitigations that we've already done. There is a new expression called "sagebrush focal areas", which is the DOI's opinion of areas that are most beneficial for sage grouse. There has been a concern in the community of Baker, NV about their water tank. It needs to be replaced and relocated in a similar place. It'll be relocated next to the old one. BLM has said they can't do that because there is too much sage grouse habitat around there. Secretary Jewell committed to resolve the issues impacting the water tank in Baker by early next year in a manner that maintains public health and safety. The Governor agrees. DOI

committed that a timeline and path forward will be determined soon. This is important for us as it will create the pathway for the community expansion around Caliente, Panaca, and Pioche exempted from having to have a sage grouse moratorium of some kind. The map BLM produced shows those communities and land expansions that have been worked on for years would be stopped. Getting Secretary Jewell to discuss the water tank and to recognize the community development issues, along with public safety and health, may give us a foot in the door to get Pioche, Panaca, Caliente, and Antelope Canyon ROW for power line exempted from the sage grouse stop. Connie advised there is a plan by NY Governor to include nuclear power in the state's low carbon policy. Egypt is going to build four new reactors in the next ten years. Cory Lytle discussed the host fee. There is a special use permit on the Planning agenda for this Thursday. The Senior Centers are always on the capital improvements list and we need to consider their large projects during budget hearings. These facilities need to be looked at. We don't have the manpower to work on them every day. Long term planning is needed. Varlin discussed The Monument. For the last 45 years, Varlin has been dealing with federal agencies, BLM or Department of Interior. They say one thing and do another. They make agreements; you're forced to uphold your end but they don't uphold theirs. As we move into the development of the management plan for The Monument; their intentions aren't always grand.

**#20-ADJOURN**

There being no further business for the Board to attend to, Kevin adjourned the meeting at 12:02 p.m.

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

*[Large red handwritten signature]*