

Draft Minutes

Special Meeting

February 22, 2010

The Board of Commissioners held a Special Meeting on Monday, February 22, 2010 at the American Legion Hall, 339 North Railroad, Buena Vista. Board members present were Chairman Frank Holman, Commissioner Tim Glenn and Commissioner Dennis Giese. Others present were County Attorney Jenny Davis, County Development Services Director Don Reimer, Chaffee County Clerk Joyce Reno and Deputy County Clerk Merrilou Cicerelli.

Following the Pledge of Allegiance, Chairman Holman called the meeting to order at 8:33 a.m.

Chairman Holman asked for verification from Deputy Clerk Cicerelli that the Commissioner's agendas were distributed appropriately. Deputy Clerk Cicerelli stated that the agendas had been distributed appropriately.

Chairman Holman stated that the reason for this special meeting was for considering certain amendments to the Nestle Waters North America, Inc.'s Permit to conduct activities of state interest in an area of State Interest (1041 Permit) and Special Land Use Permit, granted pursuant to Chaffee County Resolutions 2009-42 and 2009-43, respectively. The proposed amendments would allow for the installation of pipeline under the Arkansas River by trenching rather than boring. He stated that public comment would be limited to this aspect of the application only.

County Attorney Davis presented an overview of the reason for the special meeting. She asked if anyone in attendance had an objection to the procedure or felt that there was any conflict of interest on the part of the Board. There were none.

Chairman Holman asked County Development Services Director Reimer to update the Board on this request.

County Development Services Director Reimer presented an overview and an update on the request. He stated that the Planning Commission had recommended unanimously approval of the request.

Nestle Water Counsel Holly Strabizky presented an overview of what was being requested.

Buena Vista Town Administrator Sue Boyd presented the Town's request for a line across at the same time as the Nestle Waters pipeline that would be laid to accommodate the possibility of providing water to areas to the south of town when

future annexation was made. This would not just be for water but other utilities also.

Bobby McClead, Apex representative, presented a detailed description of the requested pipeline construction. She explained the Aqua Barrier Innovative Cofferdam Plan and the type of construction and the erosion control and re-vegetation plan that would be used. She gave an explanation of the emergency access that was planned. The banks of the river would be restored to same or better visual appearance. Nestle Waters requested modification of the Special Land Use Permit and the 1041 Permit for the purpose of installing the town water pipeline and Nestle Waters project pipeline, revise method of crossing Arkansas River from directional drilling to open cut, best available technologies to be used in construction and erosion control.

Nestle Waters Counsel Strablizky presented comments on the Planning Commission recommendations on the 1041 Permit and the Special Land Use Permit. She commented that Buena Vista needed more time to get agreements with the land owners.

Buena Vista Town Administrator Boyd stated that the Town was prepared to execute the needed agreements with the land owners at their next meeting.

County Attorney Davis was concerned that letters of intent that the Board had received were not enforceable agreements.

Buena Vista Town Administrator Boyd gave explanations of the easement, what could possibly be done with the pipeline and how the agreements would not be needed with other owners until a later date.

James Aragon, CDOW (Colorado Division of Wildlife) Area Manager, stated he was in attendance to answer any questions. He stated that if the Nestle Waters river project was completed by March 15th, they did not have a problem. He explained that the emergency rescue pad restoration would be a benefit to the people of Chaffee County and the re-vegetation would be good for citizens.

Commissioner Glenn commented that originally it was planned to be restored to the original condition. He asked if it was correct that the CDOW had now asked for a sloping type of access.

Area Manager Aragon stated that this type of banking would work better in the area.

Commissioner Glenn asked if this would be a soft surface.

Area Manager Aragon stated that it would be better if it was soft, not hard.

Carlos Boyd, 2930 County Road 291, Buena Vista, stated that he was not in favor of this amendment to the project.

John Graham, 9555 County Road 175, Salida, was not in favor of this amendment to the project, because of the short schedule deadline.

Steve Hansen, 27035 County Road 310, Buena Vista, spoke in favor of the amendment to the project.

Commissioner Glenn asked Mr. Hansen if he would consider a stronger agreement for the easement.

Mr. Hansen stated his concerns. He told the Board that his wife and he would negotiate in good faith with the County and the Town of Buena Vista.

Chairman Holman asked for any further comments. There were none.

Commissioner Glenn asked if an ACA representative would speak on the procedures that would be done.

John Hollenbeck, ACA, 702 Gregg Drive, Buena Vista, presented an overview of the project that ACA would be doing.

Ms. McClean explained that they would not be doing work until they received the Army Corp of Engineers approval. She asked if the Board approved this request would they like to start the construction on both banks and if the Army Corp of Engineers did not give approval, would they have ACA reclaim the land to the current condition.

Mr. Hollenback explained that ACA had scheduled a two week time period but could possibly get the work done within a week. ACA had done projects of this type before. ACA did have a contingency plan for any possible unforeseen problems.

County Attorney Davis asked if there was a drop-dead date for the Army Corp of Engineers permit approval.

Ms. McClean stated that she had hoped that there would be a leeway of at least a week from the Army Corp of Engineers.

County Attorney Davis asked when the reclamation needed to be completed.

County Development Services Director Reimer stated that it should be done by April 16, 2010 but that the documentation allowed until April 2011. There would be a letter of credit for this work to assure re-vegetation completion of the project.

Mr. Boyd asked Nestle Waters to put up a couple million dollars in escrow just in case of a delay.

Commissioner Giese asked Mr. Aragon if this was any different than when the work was done on the white water parks that had been done in the river.

Area Manager Aragon stated that there should not be any difference between the two types of work and that there should be less disruption with this type of work than putting the big machinery equipment in the river, which kicks up sediment.

Commissioner Giese asked if the time frame would be during the lowest flow time of the year.

Area Manager Aragon stated it was.

Alan Rule, 774 County Road 7, Howard, asked why this could not be down in the end of the flow time period such as in late October.

Area Manager Aragon stated that the end time of the season would be in November. The times were set in the fall because of the spawn times and in the spring due to the insect season.

Mr. Rule stated that he was against the amendment to the project.

County Attorney Davis asked if Nestle Waters would consider the November time frame.

Ms. McClean stated that if this request or the 404 Permit was not approved, they would use the directional drilling for their pipeline to keep the project on time.

Commissioner Giese asked Mr. Aragon if March 15th was the drop-dead date.

Area Manager Aragon stated that for work in the river that was the date, but that work on the banks could be continued until they were finished.

Chairman Holman asked for any further comments. There were none. He closed the public hearing at 10:21 a.m.

The meeting was opened for Board questions, deliberations and comments.

Commissioner Glenn asked staff if the proposal would meet the standards of the 1041 Regulations.

County Development Services Director Reimer stated that it would satisfy the regulations if everything was done as proposed.

Commissioner Giese commented that it seemed that this would benefit the citizens of Buena Vista and the County. Buena Vista had contacted Nestle Waters with the proposal of placing their pipe at the same time to save expense. Nestle Waters had decided to go back and go through this public hearing process again, which showed him a lot of commitment by Nestle Waters to help the community. He felt that the timeline was very short but felt that Nestle Waters knew that any approval would be contingent on the 404 Permit approval by the Army Corps of Engineers, which could come through today or maybe not until March 14th, which would be terrible. He felt that ACA had the knowledge to perform the work and had the equipment and the experience to do this project in a timely manner. He felt that the emergency access was also a plus for his decision.

Chairman Holman was pleased that the CDOW was willing to work with Nestle Waters on this project. He did feel that this would have to be contingent on the 404 Permit approval.

Commissioner Giese asked County Attorney Davis to present an overview of the draft resolution.

County Attorney Davis presented an overview of the draft resolutions that would amend Resolution 2009-42, a resolution granting an amendment to Nestle Waters North American, Inc's permit to conduct an activity of state interest in an area of state interest (1041 Permit) and would amend Resolution 2009-43, a resolution approving application of Nestle Waters North America, Inc. for an amendment to a Special Land Use Permit (Commercial Spring Development; Pipelines and Truck Loading Station). She stated that both resolutions would have an added timeline and deadlines for the project of March 15th for river bed completion and April 16, 2010 for completions on the river work and the reclamation.

Commissioner Giese made a motion to approve Resolution 2010-20 on the 1041. Commissioner Glenn seconded the motion. On the question, the motion carried 3 – 0.

Commissioner Glenn made a motion to approve Resolution 2010-21 on the Special Land Use Permit. Commissioner Giese seconded the motion. On the question, the motion carried 3 – 0.

County Attorney Davis stated that there was still a question on the easement and approval of that.

Commissioner Glenn made a motion to approve an amendment to the easement with the County and have a separate easement with Buena Vista and have the chairman be authorized to sign the finished documents. Commissioner Giese seconded the motion. On the question, the motion carried 3 – 0.

Being no further business, the Special Meeting of the Board of Commissioners ended at 10:57 a.m.

Attest:

Joyce M. Reno
Chaffee County Clerk

"The Board of County Commissioners (the "Board") acknowledges receipt of the above of the above draft meeting minutes. It is the policy of the Board, adopted at a regular meeting held on October 20, 2009, that the CD taken at the meeting shall constitute the official minutes of the meeting. To the extent that the above textual summary provides an overview of the subject matter discussed and action taken by the Board, the above shall constitute the visual text record of the Board. Any further detail, including summaries of testimony and deliberations, has not been approved by the Board should not be considered minutes of the Board."

Clerk's Note:

Since the Board of County Commissioners (the Board) did not approve the above minutes, they will remain as draft minutes as minutes of record. A CD is available for the official recording of this meeting.