

**PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS  
REGULAR MEETING, JUNE 5, 2007**

THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY MET IN  
REGULAR SESSION WITH THE FOLLOWING MEMBERS PRESENT:

Dick Downey	Chairman
Kit Shy	Vice-chair
Carole Custer	Commissioner
John Naylor	County Attorney
Debbie Livengood	Clerk to the Board

Also present was Nora Drenner, reporter for the Wet Mountain Tribune, and five members of the C-4 Organization.

Meeting was called to order at 8:40am.

The pledge was recited.

Human Resource/Finance Manager, Dawna Hobby, met with the Board to discuss an employee's request to have his benefits (sick and vacation time) with the county be retroactive to his start date, which was in the year 1999 instead of March 2003. According to Dawna, she gave Frank Hardin the date of March 2003 to be retroactive since that was the time frame that the county put him on the insurance and retirement plans. The Board recommended that she visit with Fred Jobe.

Commissioner Shy made a motion seconded by Commissioner Custer to adopt Resolution Number 07-06. Motion carried unanimously.

*CUSTER COUNTY RESOLUTION  
RESOLUTION NUMBER 07-06*

*A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, COLORADO, CALLING AN ELECTION ON NOVEMBER 6, 2007 TO AUTHORIZE AN INCREASE IN THE COUNTY'S AD VALOREM PROPERTY TAX LEVY FOR THE COUNTY'S ROAD AND BRIDGE FUND; SETTING THE TITLE AND THE CONTENT OF THE QUESTION FOR THE ELECTION; PROVIDING OTHER MATTERS AND RATIFYING ACTION PREVIOUSLY TAKEN RELATING THERETO; AND PROVIDING THE EFFECTIVE DATE OF THIS RESOLUTION.*

*WHEREAS, the Board of County Commissioners (the "Board") of Custer County, Colorado ("the County"), has determined that the revenues currently available in the county's Road and Bridge fund are insufficient for the purposes set forth in Paragraph 43-2-202, Colorado Revised Statutes (CRS), as amended, including purposes set forth in the ballot question attached as Appendix A hereto (the "Ballot Question"), that an ad valorem tax increase is*

*required to fund the same, and that the public interest and needs of the County require that the County request voter approval of such tax increase; and,*

*WHEREAS, the Board has determined to set the ballot title and ballot question for the Ballot Question to be submitted at the election called by this Resolution; NOW, THEREFORE,*

*BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, COLORADO:*

- 1. An election shall be held on Tuesday, November 6, 2007, at which the Ballot Question shall be submitted to the eligible electors of the county. The Ballot Question shall be in substantially the form attached as Appendix A. Appendix A is hereby incorporated into this Resolution as if set forth in full herein.*
- 2. The election shall be conducted as a coordinated election in the county in accordance with articles 1 to 13 of title 1, CRS, as amended (the "Uniform Election Code"). The county hereby adopts the provisions of paragraph 1-11-203.5, CRS, as amended, as the exclusive procedure for protesting or contesting the content of the ballot title.*
- 3. The cost of the election shall be paid from the general fund of the county.*
- 4. The County Clerk & Recorder is hereby designated as the County's "Designated election official," as defined in paragraph 1-1-104(8), CRS, as amended, as the person responsible for coordinating the election, and is directed and authorized to take such action as may be necessary to call, hold and canvass the election in accordance with law. All acts required or permitted by the Uniform Election Code relevant to voting by early voters' ballots, absentee ballots and emergency absentee ballots, which are to be performed by the designated election official, shall be performed by the County Clerk & Recorder.*
- 5. If the county refers more than one question to the voters at the same election (whether by this Resolution or one or more other resolutions), the order the ballot shall, as provided by the rules of the Secretary of State, be as follows: first measures to increase taxes; second, measures to increase debt; and third, other referred measures. If the county refers more than one question within any such category, the order within such category shall, unless otherwise determined by the Board, be the same as the order of the ballot questions in the resolution of the Board that orders that such ballot questions be so referred (with questions set forth in separate resolutions listed in the order in which such resolutions were adopted).*
- 6. No later than September 21, 2007, the Board shall submit to the County Clerk, in the form, if any, specified by the County Clerk, the notice required by Article X, Section 20(3)(b) of the Colorado Constitution. The County Clerk & Recorder shall cause such notice to be mailed to all registered electors of the county no later than October 5, 2007. Such notice shall be in the form and contain the information required by law.*
- 7. The County Clerk and Recorder shall cause to be published, on or before October 26, 2007 and in the form and containing the information required by law, the*

*notice required by paragraph 1-5-20, CRS, as amended. Such notice shall also be posted as required by paragraph 1-5-205(1.3), CRS, as amended.*

- 8. If a majority of the votes cast on the question submitted at the election shall be in favor of such question, the county acting through the Board shall be authorized to levy taxes in accordance with the Ballot Question. Any authority to levy taxes, if conferred by the results of the election, shall be deemed and considered a continuing authority to levy the taxes so authorized and neither the partial exercise of the authority so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full authority so conferred.*
- 9. For purposes of paragraph 1-11-203.5 CRS, as amended, this Resolution shall serve to set the ballot title and the ballot question for the Ballot Question and the ballot title for the Ballot Question shall be the text of the Ballot Question itself.*
- 10. The officers and employees of the county are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.*
- 11. All actions not inconsistent with the provisions of the Resolution, heretofore taken by the members of the Board and the officers and employees of the county, directed toward holding the election for the purposes stated herein are hereby ratified, approved and confirmed.*
- 12. All prior acts, orders or resolutions, or parts thereof, by the county in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.*
- 13. If any section, paragraph, clause or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of the Resolution, it being the intention that the various parts hereof are severable.*

*IT IS HEREBY DECLARED by the Board of County Commissioners of Custer County, Colorado that this Resolution is necessary for the immediate preservation of the public health, safety and welfare, and that it shall become effective immediately upon its adoption.*

*RESOLVED, ADOPTED AND SIGNED THIS 5<sup>TH</sup> DAY OF JUNE, 2007, AT WESTCLIFFE, COLORADO.*

*CUSTER COUNTY BOARD OF COMMISSIONERS*

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*Richard L. Downey, Chairman*

*ATTEST:*

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*Debbie Livengood, Clerk & Recorder*

APPENDIX "A"

SHALL CUSTER COUNTY TAXES BE INCREASED UP TO \$\_\_\_\_\_ ANNUALLY (FOR TAX COLLECTION YEAR 2007) AND BY SUCH ADDITIONAL AMOUNTS RAISED ANNUALLY THEREAFTER BY AN AD VALOREM PROPERTY TAX MILL LEVY IMPOSED AT A RATE OF UP TO FIVE (5) MILLS OR SUCH LESSER RATE AS THAE BOARD OF COUNTY COMMISSIONERS SHALL DETERMINE, TO PAY THE COSTS OF ROAD AND BRIDGE CONSTRUCTION, MAINTENANCE AND ADMINISTRATION, AND SHALL THE REVENUE FROM SUCH TAXES AND THE EARNINGS THEREON CONSTITUTE A VOTER-APPROVED PROPERTY TAX REVENUE CHANGE WITHIN THE MEANING OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND AN EXCEPTION IN THE CURRENT YEAR AND EACH SUBSEQUENT YEAR TO THE LIMITATIONS SET FORTH IN SECTION 29-1-301 OF THE COLORADO REVISED STATUTES, AS AMENDED?

YES \_\_\_\_\_

NO \_\_\_\_\_

Commissioner Shy made a motion seconded by Commissioner Custer to adopt Resolution Number 07-07. Motion carried unanimously.

Resolution no. 07-07

CONCERNING A BALLOT PROPOSAL TO CREATE A TOURISM BOARD AND LEVY A LODGING TAX

WHEREAS, the Colorado revised statues '03-11-107, 5, ET SEQ., enables the Custer County Board of County Commissioners to create the Custer County Tourism Board; and,

WHEREAS, the purpose of the Custer County Tourism Board is to oversee, collect and disburse the Custer County lodging tax for the purpose of promoting and marketing tourism in Custer County; and,

WHEREAS, this board has been petitioned to place this proposal on the 2007 General Election Ballot; and,

WHEREAS, the lodging tax is an effective way of raising money to promote tourism which, in turn, would promote economic development in Custer County.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

- 1) That there shall be referred to the qualified electors of Custer County, State of Colorado at the election to be held on Tuesday, the 6<sup>th</sup> day of November, 2007 the following BALLOT QUESTIONS:

*COUNTY REFERENDUM*

*CREATING LODGING TAX AND TOURISM BOARD*

*“SHALL CUSTER COUNTY TAXES BE INCREASED BY A PROJECTED AMOUNT OF \$25,000 ANNUALLY THROUGH THE IMPLEMENTATION OF A TWO PERCENT (2%) TOURISM LODGING TAX ASSESSED ON ROOMS OR ACCOMMODATIONS BY ANY PERSON OR ENTITY RENTING A MOTEL, CAMPGROUND, OR HOTEL OR SIMILAR ENTERPRISE LOCATED IN THE COUNTY OF CUSTER FOR LESS THAN 30 CONSECUTIVE DAYS, PURSUANT TO C.R.S., 30-11-107.5 BEGINNING JANUARY 1, 2008, AND BY WHATEVER AMOUNT FUTURE COLLECTIONS OF SUCH LODGING TAX TOTAL, THE REVENUES FROM SUCH TAX TO BE USED EXCLUSIVELY FOR ADVERTISING AND MARKETING OF LOCAL TOURISM, TO BE ADMINISTERED BY A BOARD OF AT LEAST THREE PERSONS FROM THE TOURISM INDUSTRY WITHIN THE COUNTY OF CUSTER APPOINTED BY THE COMMISSIONERS OF CUSTER COUNTY, WHICH SHALL BE TO THE EXTENT FEASIBLE, TO ADVERTISE AND MARKET TOURISM FOR THE BENEFIT OF CUSTER COUNTY.”*

YES \_\_\_\_\_

NO \_\_\_\_\_

- 2) *That the County Clerk shall publish the ballot questions contained in this Resolution for four (4) separate times, one week apart, in the official newspaper of the County of Custer, State of Colorado and the conduct of the election shall confirm, so far as practical, to guidelines set forth by statute.*

*INTRODUCED, READ, APPROVED AND ADOPTED on the 5<sup>th</sup> day of June, 2007.*

*BOARD OF COUNTY COMMISSIONERS  
OF CUSTER COUNTY, COLORADO*

BY \_\_\_\_\_  
*Richard L. Downey, Chairman*

BY \_\_\_\_\_  
*Christopher L. (Kit) Shy, Commissioner*

BY \_\_\_\_\_  
*Carole J. Custer, PhD., Commissioner*

\_\_\_\_\_  
*County Clerk and Recorder and Ex-Officio Clerk to said Board*

Dwight and Sue Brothers, along with John Riding, met with the Board to hear their decision concerning County Road 129 that both parties have been meeting with the Board about. Both parties were given the opportunity to express any other comments that they felt might have an impact on the Board's decision. After listening to what both parties had to say, the Board then asked the county attorney for his opinion. Mr. Naylor stated that all of the evidence shows that the road in question is a county road and has been for years. Secondly, there has never been any intention to abandon this road. Thirdly, Mr. And Mrs. Brothers acknowledge that this is a county road since they asked the Board's permission to put a gate across the road. Mr. Naylor then stated that in his opinion, with the facts presented, this is a County Road.

Commissioner Downey made a motion seconded by Commissioner Shy that all of the evidence shows that County Road 129 is a county road and has been for a very long time and has never been vacated or abandoned and that the gate needs to be removed on that portion of County Road 129 from the SE corner of Brother's parcel to a point beyond Mr. Riding's north gate (approximately 500') to allow access to said Riding's gate. Commissioner Shy and Downey voted in favor of the motion with Commissioner Custer abstaining. Motion carried unanimously.

John Rusher met with the Board concerning a gate that Mr. Jim Hood has on County Road 310 that was damaged by Mr. Rusher. According to Mr. Rusher, Curt Wilson installed the gate in the 1990's and it is too narrow to get a trailer through. Mr. Rusher has put the post back up that he knocked over, but would like to see the county make the opening approximately two feet wider. Mr. Rusher is willing to hang the gate and install the posts, but does not feel he should have to purchase the gate. He feels that Mr. Hood needs to purchase the gate since he is the owner of the property. Mr. Rusher stated that he notified Mr. Hood the he had knocked down the post by accident and tried to explain why he feels it needs to be made wider. According to John, Mr. Hood got very upset. John again explained that the county road is wider than the gate is. The Board explained that they have asked the county attorney to draft a letter from their last meeting with John concerning this issue and mail a copy to both Mr. Hood and Mr. Rusher.

Commissioner Shy made a motion seconded by Commissioner Custer to send the following letter to both Mr. Rusher and Mr. Hood. Motion carried unanimously.

May 31, 2007

James Hood  
911 County Road 155  
Westcliffe, CO 81252

John Rusher  
482 County Road 141  
Westcliffe, CO 81252

Re: County Road 310

*Gentlemen:*

*The County Commissioners have requested I reply to you concerning the gate Mr. Hood has placed on County Road 310 that was damaged by Mr. Rusher. County Road 310 is a part of the County Road System, and it is my understanding that the county has not insisted upon removal of gates as being obstructions to the county road. Various landowners along County Road 310 have installed these gates without objection from neighboring landowners. The gates therefore are the personal property of whoever has installed them and not the property of the county. In my opinion, if Mr. Rusher has damaged a post that belongs to Mr. Hood, Mr. Rusher would be responsible for those damages. The county would have no liability whatsoever for the action of Mr. Rusher.*

*Under the Statute C.R.S. 43-5-301, there is a misdemeanor offense for any person or corporation who obstructs the roadway by any means, and obviously a gate is an obstruction and upon conviction, would be punished by a fine of not less than \$10.00, nor more than \$300.00, and would be liable to any person, unit of government, or corporation a civil action for any damages resulting there from, and upon a third conviction, would be punished by a fine of not less than \$10.00, nor more than \$300.00, or by imprisonment in the County jail for not more than three (3) days, and each day the conditions are allowed to continue upon any highway, shall be deemed a separate offense.*

*It is my understanding that the gate that Mr. Hood installed was narrower than the other gates on the road, and was damaged during a snow removal process. If the gate is too narrow, it would seem that a reasonable solution would be to install a wider gate consistent with the other gates on the road to eliminate such an occurrence in the future. In the alternative, if the matter cannot be resolved amicably between you two, the county would have to insist on the removal of all gates on County Road 310.*

*Trusting this matter will receive your considered attention and further involvement with the county will not be necessary.*

*Yours truly,*

*NAYLOR & GEISEL,PC*

*John R. Naylor, Esq.*

*Enclosure*

*JRN/dae*

*Pc:*

Jean Mavromatis, Tobacco Education Prevention Coordinator, met with the Board to give her monthly report. She informed the Board that she is working on a new grant called “Safe School-Healthy Kids”.

County Health Nurse, Donna McDonnall, met with the Board to give her monthly report. She reported that she had completed eighteen child and twenty-eight adult immunizations. There were ten TB tests performed and a total of one hundred and nine blood pressure screenings done in the month of May. The National Guard came to Westcliffe on May 14<sup>th</sup> and picked up the unused supplies from the 9-Health Fair. Donna has been approved to purchase several items, along with four 800 MHz radios, from the Emergency Preparedness and Response Grant monies. Donna also attended the state, regional, and local EPR Partners Planning Conference in Lakewood on May 2<sup>nd</sup> to learn the guidelines needed to start working on next years EPR grant. She attended a regional workshop on May 15<sup>th</sup>, concerning the “Pandemic Influenza, Quarantine, Social Distancing, and Isolation” in Pueblo. The county is required to write another plan for the Pandemic Influenza and it is to include the other components mentioned above. Donna has updated the county Emergency Operations Plan and has uploaded that information to Colorado Health Alert Notification Systems. She also reported that Mark Korbitz, regional EPR planner, is applying for a grant that would allow free flu shots to school aged students.

County Treasurer, Virginia Trujillo, met with the Board to give her monthly report. It was approved.

The Board adjourned for lunch at 12:00pm.

The Board reconvened at 1:00pm for a joint meeting with the Board of County Commissioners and the Planning Commission.

Commissioner Shy moved to accept the recommendation of the Planning Commission to approve the request by Robert B. McIlwraith for a Modification of a Special Use Permit for The Letter Drop restaurant. Commissioner Custer seconded the motion. The motion passed unanimously.

The Board authorized Commissioner Shy to speak to the fire department on their behalf concerning the courthouse and the need for a fire plan.

The Board adjourned for the day.