

**PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS  
REGULAR MEETING, SEPTEMBER 1, 2009**

THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY MET IN REGULAR SESSION IN THE COMMISSIONERS BOARDROOM.

Commissioner Chairman Lynn Attebery called the meeting to order at 9:00 AM and the Pledge of Allegiance was recited

Roll Call was taken:

Lynn Attebery	Chairman	Present
Jim Austin	Vice-Chairman	Present
Carole Custer	Commissioner	Present
John Naylor	County Attorney	Present
Kris Lang	Deputy Clerk to the Board	Present

Also present was Nora Drenner reporter for the Wet Mountain Tribune and several community members.

**AGENDA:**

- Call meeting to order
- Pledge of allegiance
- Roll Call
- Amend Agenda
- Approval of minutes
- Old Business:
- Public Health Report
- Tobacco Education Report
- Upper Arkansas Area Council of Governments (UAACOG) Affordable Housing
- Affordable Housing Committee
- CCKC Report
- Planning and Zoning Report
- Road and Bridge Report
- Ponderosa Heights Subdivision/Request Street Name
- Census 2010

The meeting was called to order at 9:00 AM and the Pledge of Allegiance was recited.

The BOCC met with County Attorney John Naylor and discussed the following items:

- Robert Hamilton (represented by Banner & Bower, PC Attorneys at Law). The County Attorney will prepare a summons to be filed with the county court regarding the obstruction on CR 390.
- Robert Hamilton – the BOCC will prepare a correspondence regarding the four (4) un-permitted accessory buildings on 1054 CR 390. The Board unanimously agreed the post construction fee of \$1.35 per square foot will remain in force. The County Attorney will prepare a summons to be filed with the county court regarding the un-permitted containers/accessory buildings.
- Pete Moran – The County Attorney will investigate and review the reported health violations and the Department of Health source of filth regulations for the property at Ferris Drive, Silver Cliff Heights.

**MOTION by Commissioner Austin, seconded by Commissioner Custer:**

Authorizing the County Attorney to proceed with the preparation of the health violation summons to be filed with the county court. Commissioner Custer inquired on the downside of such an action. John Naylor, County Attorney responded the only downside would be if the county failed to prove the health violation. Motion carried unanimously.

- Brigido Vargas – The County Attorney is preparing a summons to be filed with the county court regarding the un-permitted structure on Angel Road in the San Isabel area.
- Wanda Mattice Lot 15 in the San Isabel Subdivision (represented by the Law Offices of Grant W. Lewis, Esq.). The County Attorney reported the clarification on whether Lake Street is a public thoroughfare is in process.
- Recording Fees – The County Attorney reported that Section 30-1-103(4) of the Colorado Revised Statutes stated that documents containing multiple grants, notices, assignment, or releases of leases, deeds of trust, mortgages, or liens, or other instruments that require multiple entries in the grantor or grantee index, shall incur an additional fee of five dollars for each such entry in excess of one per document. He remarked that two entries per index section would remain under the five dollar fee (plus a surcharge of \$1 on the first page). Additional entries may be subject to an additional fee of five dollars each.
- Gate/CR 139 Sierra Mojada South. The County Attorney presented a correspondence from the President of the Sierra Mojada South POA, David Blair approving the installation of the gate on CR 139. He also presented the MOU from Canda Ranch, LPA dated June 24, 2008 regarding the installation of the gate. (copy filed in Clerk's Office/copy forwarded to the Road and Bridge Department)
- Ridgeview Tel contract – The County Attorney advised the contract has been signed and processed (Original in the Clerk and Recorder file).
- Diverse Datum Lease Agreement pending. Commissioner Custer will contact Mike Sanders and Lance Villers on the status of the agreement.

The monthly Public Health report was postponed to a future date.

Jean Mavromatis, Tobacco Education and Prevention Coordinator met with the BOCC and gave her monthly report. She presented a Proclamation for the Boards approval and signatures. Following a brief discussion the Board agreed to sign the Proclamation as presented.

**NATIONAL CHILD PASSENGER SAFETY WEEK, 2009**

**PROCLAMATION**

Children are our country's most precious resource. As parents and caregivers it is our responsibility to keep America's children safe. Every year, thousands of children are tragically injured or killed in automobile crashes. For children 3 to 6 and 8 to 14 years old, it is the leading cause of death. It is hard to overstate the toll this takes on families. Together we can put an end to this.

Today, all 50 States, the District of Columbia, and our Territories have laws requiring the use of Child safety seats, booster seats, and seat belts for children traveling in motor vehicles. These Laws were enacted because of the tremendous safety benefits they provide. We know that child restraints help save lives and reduce injuries. We also know that they are most effective when

installed and used correctly. Sadly, three out of every four child restraints are not properly used. Starting now, working together, we must join forces to prevent these deaths and injuries. That is why Custer County is committed to working closely with our partners and safety advocates to help reduce the number of young lives lost on our roadways. Our goal is to educate parents and caregivers on how to properly install and use child restraints. During National Child Passenger Safety Week, there will be hundreds of free child seat inspection stations set-up across the country beginning on September 12, National Seat Check Saturday. We encourage all parents and caregivers to take advantage of this service and ensure that their children are getting the very best protection. There will be a free child seat inspection here in Custer County on Thursday, September 17<sup>th</sup> at the Custer County Pre-School & CC Kids Club in the parking lot. NOW, THEREFORE, The Custer County Board of Commissioners, do hereby proclaim September 12 through September 18, 2009, as National Child Passenger Safety Week. We urge everyone to help reduce injuries and the tragic loss of life by buckling up themselves and every child on every trip, every time.

Lynn Attebery  
Chair

Jim Austin  
Vice Chair

Carole J. Custer, Ph.D.,  
Commissioner

(Two (2) signed originals with Jean Mavromatis/copy retained in the Clerk and Recorder)

Ms. Mavromatis reported that thirty (30) child safety seats were purchased under a grant from Colorado Department of Transportation (CDOT). She said that the State Tobacco Education Prevention Partnership (STEPP) Committee was in the process of reviewing the budget and that funding reductions would be forthcoming. She remarked that Custer County will be hosting the Heart of Colorado Health and Wellness Committee meeting this month. She reported that in conjunction with the school district, special mailings of the healthy kids Colorado survey have been scheduled. She said completed and returned surveys would be entered into a prize drawing. Commissioner Custer stated she and Jean Mavromatis attended a work-shop to identify and understand the roles of volunteer boards, committees and organizations. She reported funding sources were being explored to bring the training program to the county.

Sharon McKinsey, UAACOG Regional Housing Development Director presented the Attachment G Sub recipient Agreement for the Boards approval and signature. She explained the agreement designated Custer County, Colorado as the lead party of Silver Cliff Properties LP and the Upper Arkansas Area Development Corporation (UAADC) will provide the auditing, reporting and pay requests.

**MOTION by Commissioner Austin, seconded by Commissioner Attebery:**

**To sign the Sub recipient Agreement as presented. Motion carried unanimously.**

(Signed original with Sharon McKinsey/copy of the full CDBG will be forwarded to the county by Ms. McKinsey on completion)

Mike Liebman, representing the Custer County Affordable Housing Committee met with the BOCC and gave a report on the Mutual Self Help Housing Program. He said that the Affordable Housing Committee functions as an advisory board to the BOCC. He remarked that the committee is requesting that the BOCC schedule a public meeting to encourage residents to take advantage of the program. Mr. Liebman reported the committee has held several meetings and published articles in the Wet Mountain Tribune encouraging participation in the program. He stated that nine applications have been received. He said that the self help housing program provides families with an excellent opportunity to own a home.

Mr. Liebman remarked there is a stigma perception attached to a self-help program. He asked for the Boards support and input on how to improve the promotion of the program. Following a discussion that included Commissioners Attebery, Austin, Custer, Mr. Liebman and Ms. McKinsey it was agreed the next step would be the preparation of a affordable housing need survey for distribution within the community. The completed and returned survey forms would be entered into a contest for a yet to be determined prize drawing.

Commissioner Attebery presented the Letter of Engagement from Josh A. Marks of Berg Hill Greenleaf & Ruscitti LLP Attorneys and Counselors at Law. He stated the firm would provide legal services on the County's behalf regarding the building and zoning dispute with William and Pam Knoth. He said the Letter of Engagement referenced William and Paula Knoth and that following the advice of the County Attorney, one line was placed through the name Paula and the name Pam was inserted and initialed by the BOCC Chair.

**MOTION by Commissioner Attebery, seconded by Commissioner Austin:**

To sign the Engagement Letter as presented with the designation of John Naylor, County Attorney as the contact person for the County. Commissioner Custer abstained from voting and e stated the County needs to be cognizant regarding the fee's that are being incurred by this action especially during the present budget short-fall.

Commissioner Custer stated the billing address on the Engagement Letter references the County Attorney's law office in Pueblo and it should be revised to the BOCC address in Westcliffe. She read a portion of the letter into the record: We shall assume such representation, understanding that we will charge for our services and the then current hourly rate per employee (current rates are set forth on Exhibit A, attached hereto). Charges are calculated in six to fifteen minute increments. We will give the County at least 30 days advance notice of any change in our firm's billing rates, as they are periodically increased to accommodate increases in the cost of operations. The County will be required to pay all costs and expenses incurred by our firms on the County's behalf. Costs, expenses and fees are payable regardless of the outcome of the case or matter. In the event we are required to travel, we will charge at our regular rates for travel time. Commissioner Custer referenced the rates outlined in Exhibit A, Partners at \$225.00/hour, Associates at \$175.00/hour and Paralegals at \$150.00/hour. She stated no mileage rates or travel time charges have been provided.

Commissioner Attebery amended his motion to sign the Engagement Letter as presented designating John Naylor, County Attorney as the contact person for the County with a modification that the County Attorney prepare a correspondence addressing the concern regarding the billing address and travel charges. Commissioner Austin seconded the motion. Commissioner Custer abstained stating she did not have all the information necessary to make a decision. Motion carried.

(Original with the County Attorney/second original in Clerk and Recorder file)

Terri Chambers, Custer County Kids Club (CCKC) Director met with the BOCC and gave a report. She started the CCKC Fund Raiser on August 12, 2009 was a success resulting in enrollment fee financial assistance for eligible families. Commissioner Austin requested a summary of the CCKC income. Ms. Chambers responded that during the month of August the enrollment fees comprised of 64% preschoolers, 21% kindergartners and 15% summer enrollees.

She reported a percentage increase of preschoolers during the month of August and she attributes that increase to the relocation of the preschool into the same facility. She reported that 22 part time members have enrolled in the CCKC to date. Ms. Chambers stated the CCKC hours were from 7:30 AM to 6:30 PM and the facility was equipped to accommodate 15 members at any one given time. Commissioner Custer said the October figures should reflect an increase in elementary students attending the CCKC after school now that school is back in session. Commissioner Attebery reviewed the CCKC deposit information and for tracking purposes suggested that the deposits be made at least twice a month in the future.

Ms. Chambers inquired on the procedure and protocol for CCKC personnel evaluations. Following a brief discussion the Board agreed that Ms. Chambers would provide the BOCC with a sample personnel evaluation form used by the school district. Commissioner Custer said the advisory boards of the CCKC and CCYC are working with the state to obtain a 501 3 (c ) status by the end of the year.

The BOCC recessed at 11:00 AM.

The BOCC reconvened at 11:20 AM.

Commissioner Attebery said that the BOCC had prepared a letter of support to hire a full-time Custer County Colorado State University (CSU) Extension Agent. He remarked that the County Attorney had reviewed the correspondence. Commissioner Attebery read the letter into the record and advised the correspondence would be forwarded to the Governors office, Senators office, State Representatives and several CSU Directors.

The BOCC accepted the Sheriff's Reports for July 2009.

Jackie Hobby, Planning and Zoning Director met with the BOCC and gave a report:

- Dean Selden of Operation Uplift requested an ISDS variance. Ms. Hobby reported there was an approved septic system on the property and felt the variance request was appropriate. Reference File: 101-29-803.

**MOTION by Commissioner Austin, seconded by Commissioner Custer:**

To approve the ISDS variance request. Motion carried unanimously.

- Jeff Marek is requesting relief from the post-construction fee for the un-permitted structure on his property and has applied for an ISDS. Ms. Hobby reported that Mr. Marek is willing to pay the pre-construction permit fee of \$.45 per sq. ft. but is refusing to pay the post-construction fee of \$1.35 per sq. ft. She said a certified letter issued to Mr. Marek on June 23, 2009 had been returned unclaimed. Reference File: 101-67-450.

**MOTION by Commissioner Austin, seconded by Commissioner Custer:**

To deny the request and prepare correspondence from the BOCC notifying Mr. Marek that the post-construction permit fee of \$1.35 sq. ft. would be due within thirty days. Motion carried unanimously.

- John Dalton is requesting an ISDS for the property at 805 CR 132 (Section 28 TWP 23). Ms. Hobby reported the cabin on the property had burnt down at the beginning of the year and Mr. Dalton has plans to rebuild. Reference File: 100-43-050

**MOTION by Commissioner Custer, seconded by Commissioner Austin:**

To approve the ISDS. Motion carried unanimously.

Approved 9/29/09

- Brett and Rita Small, Wykagyl Road in the Cuerno Verde Pines would like to add a bedroom to their dwelling. Ms. Hobby reported they would need to add on to their leach field or remove a bedroom from the dwelling. Reference File: 100-76-000
- Marvin Walz, in the San Isabel area has a pre-zoning structure that is partially outside his property. He is requesting the addition of a restroom and vault. Ms. Hobby stated the addition would not be in violation of any zoning regulations. Reference File: 101-19-201
- Loyd Hunter was notified to cease any further construction on the property at 12990 CR 329 until the placement of the buildings and well have been determined by a certified surveyor. Reference File: 101-04-950
- David and Linda Niemeyer, Sioux Trail in Cuerno Verde Pines were notified of a complaint regarding a person living in a gazebo on the property. Reference File: 101-91-100
- William Mallory, Silver Cliff Ranch advised the P & Z office that he was no longer living on the property. Mr. Mallory had previously been notified that a county approved septic system was required at the property. Reference File: 102-32-860. Ms. Hobby will prepare correspondence to Mr. Mallory for the P & Z record and forward a copy to Richard Loudenberry, Town of Silver Cliff Building/Zoning Officer.
- County Landfill will add a roof over the mobile dumpster located on the property.

The BOCC and County Attorney requested that Jackie Hobby, P & A Director research information regarding the source of filth definition and regulations

The BOCC recessed at 12:30 PM.

The BOCC reconvened at 1:10 PM.

Dave Trujillo, Road and Bridge (R&B) Supervisor met with the BOCC and gave a report.

- Work completed in August: graded roads, MSHA training, culvert work on Hermit, hauled gravel to Hermit (up to Bill Colgate's), grader #7 was overhauled at Wagner Equipment, finished base one on CR 271, planted seed on Hwy 96.
- Work planned: grade roads, cut willows, pull two cattle guards on Forest Service 172 & 173 for turn arounds, patch roads.
- Charles and Joy Pullen - a fence repair bill was received from Charles and Joy Pullen. He reported that when the fence was damaged; the R&B department had been told not to be concerned with any repairs or replacements. He said the only communication since was the receipt of the fence repair bill. Mr. Trujillo stated with notification the R&B department would have repaired the fence at a more reasonable cost and had not authorized an outside repair service. Following a brief discussion, the Board requested that Mr. Trujillo prepare a correspondence in response stating the county did not approve or authorize the fence repair and is not responsible for the cost.
- Barbara Felice, CR 370 survey indicates the road is not in the correct location; work is on hold until the survey is presented to the county.

- Wagner CAT Exclusive Sales Agency Agreement and Warranty of Title for the Caterpillar Model 621, Serial Number 23H0214 in the amount of \$20,000.

The County Attorney reported that Custer County Road and Bridge was listed as the seller. He advised that a line be placed through the words Road and Bridge.

Commissioner Attebery made a line through the words Road and Bridge on the agreement and initialed the revision.

**MOTION by Commissioner Austin, seconded by Commissioner Attebery:**

To approve and sign the Wagner CAT Exclusive Sales Agency Agreement and Warranty of Title as revised. Motion carried unanimously. (Original with the Road and Bridge Department /copy retained in Clerk and Recorder file)

Joe James met with the BOCC and requested a road in the Ponderosa Heights Subdivision be named. He explained in 1995-1996 Gary Martin and John Comerford created an access road for the redevelopment of the western portion of Ponderosa Heights Subdivision and that road has not been named since insemination. Mr. James requested the road be named Taylor Drive. He said the county assessor's office is aware of this request and that Mr. Henrich requested the road name be issued in the form of a resolution.

**MOTION by Commissioner Austin, seconded by Commissioner Attebery:**

To approve the road name of Taylor Drive. Motion carried unanimously. The BOCC instructed the Administrative Assistant to prepare a resolution and forward it to the County Attorney for review and approval. The Board will review Resolution #09-06 at the October 6, 2009 BOCC meeting.

Deborah Muehleisen, US Census Bureau, Denver Regional Census Center met with the BOCC and gave a presentation. She reported the 2008 estimated population in Custer County was 3,999 and that was a 14.2% increase from 2000. Ms. Muehleisen stated that Census Day is April 1, 2010 and every resident of our nation must be counted. She proposed establishing a census count committee with the trusted voices of the community to assist with the complete count. She commented that the deadline for the designation of the committee is October 2009. The Board agreed to review the subject at a future BOCC Meeting.

Commissioner Attebery stated the BOCC had prepared a correspondence to the Custer County District Four Representatives to the Upper Arkansas Water Conservancy District (UAWCD) Board of Directors; Bob Senderhauf and Bill Donley updating the actions taken. The BOCC contracted with the law firm of Duncan, Ostrander and Dingess, PC to represent the county and review the proposed water augmentation plan. UAWCD General Manager Terry Scanga was copied on the letter.

**Commissioner Attebery made a motion, seconded by Commissioner Custer to go into Executive Session. Motion carried unanimously. Commissioner Attebery cited C.R.S. 24-6-402(4) (f) regarding a personnel matter.**

The BOCC went into Executive Session at 3:00 PM. Those present were Commissioner Attebery, Commissioner Austin, Commissioner Custer, County Attorney, John Naylor and Kris Lang, Administrative Assistant.

**Commissioner Attebery made a motion, seconded by Commissioner Custer, to go back into regular session. Motion carried unanimously.**

The BOCC came out of Executive Session at 3:50 PM. No matters were adopted and no actions or decisions were made.

John Naylor, County Attorney stated that under state statute, the original grants, agreements, and memorandums of understanding signed by the BOCC should be retained in the Clerk and Recorders file.

Commissioner Austin proposed creating a grant record log that would be accessible to the Board and the grant writers/supporters. He stated this reference would provide information on grants being reviewed, submitted and approved for county coordination. Following a brief discussion the Board agreed the topic would be discuss at the scheduled work session on September 17, 2009.

Commissioner Austin reported the Board was in receipt of correspondence from the County Surveyor, Kit Shy regarding the drainages, crossings, signage and trail surfacing concerning a trail along Highway 69 South of Westcliffe.

Commissioner Attebery said the BOCC budget was in excess of 11%. Commissioner Austin proposed the commissioners be individually responsible for any of their travel expenses until the end of the budget year. The BOCC agreed.

Commissioner Custer reported that Veltrie Disposal Services will be providing e-waste recycling on the first Saturday of each month starting on October 3, 2009. Veltrie's partnership with Colorado's highly reputable e-waste recycling vendor, Guaranteed Recycling Xperts or more commonly known as GRX will be a great asset to the county.

**MOTION by Commissioner Austin, seconded by Commissioner Custer:**

To adjourn the meeting. Motion carried unanimously.

The meeting was adjourned at 4:30 PM.

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Debbie Livengood, Clerk and Recorder  
Attest

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Lynn Attebery  
Chair