

**PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING, DECEMBER 8, 2009**

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

Commissioner 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	Absent
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

ADOPTION OF THE 2010 BUDGET

Old Business:

County Attorney – Diverse Datum Contract, CWIN Agreement, Knoth File 100-67-353, Vargas File 101-52-2001, Marek File 101-67-450, Moran File 101-07-100, Hamilton File 100-89-253, Subdivision Regulations

West Custer County Library District Board Member Ratification

Staff Reports:

CCKC Report
Treasurer Report
HHRC Report
Planning and Zoning Report
Social Services
Wet Mountain Fire District

MOTION by Commissioner Attebery, seconded by Commissioner Austin:

To accept the posted agenda. The motion carried.

Commissioner Custer joined the meeting at 9:05 AM.

John Piquette, Finance Officer, presented the BOCC with the 2010 finalized budget. The total budget is \$5,524,416.00. Mr. Piquette reported the break-down of the mill levy as follows: General Fund 10.894; Road and Bridge 5.000; Welfare 0.500; Insurance 1.500; Emergency Services 2.000 for a total of 19.894.

MOTION by Commissioner Austin, seconded by Commissioner Attebery:

To approve the 2010 finalized budget and set the mill levy at 19.894. Motion carried unanimously.

John Naylor, County Attorney introduced Don Belveal from the law offices of Belveal, Eigel, Rumans & Fredrickson and stated that Mr. Belveal was representing Bill and Pam Knoth: File 100-67-353. Also present was: Vic Barnes, Jackie Hobby, Elizabeth French, Kit Shy, Hal Julsen, Joe Arbuckle and John Brandenburg. Planning and Zoning Director, Jackie Hobby reported that the former Planning and Zoning Director had approved the building plans including the over-height presented by Bill and Pam Knoth in December of 2003. She said the zoning permit was issued in February of 2005 and that Mr. and Mrs. Knoth moved into the residence in September of 2006. Ms. Hobby remarked a written complaint was received in the planning and zoning department in July of 2008. She stated that during her initial investigation she discovered the zoning permit on the residence and barn were not closed out and a compliance inspection had not been done. Ms. Hobby reported the survey completed in June 2009 revealed the residence was over-height. She said Bill and Pam Knoth were notified of the findings and asked to apply for an over-height variance which they subsequently declined stating the architectural plans with the over-height had already been approved by the previous Planning and Zoning Director. She stated under the zoning resolution the BOCC could make the final determination. John Naylor, County Attorney advised the BOCC that under an estoppel the county could not go back and make changes to plans approved by a previous employee or authoritative body representing the county. He said in certain situations, the law refuses to allow a person to deny facts when another person has relied on and acted in accordance with the facts on the basis of the first person's behavior.

Commissioner Attebery asked if there was anyone in the audience who wished to speak.

Hal Julson stated he was an adjacent land owner and felt the over-height issue should be referred to the zoning committee for review. He questioned the compliance of the required user's tax fee and whether a revised property assessment was on file. Joe Arbuckle said the zoning rules should be enforced consistently and fairly across the board. John Brandenburg agreed. Don Belveal reported that Mr. and Mrs. Knoth would not apply for an over-height variance or appear before a zoning board. He advised that the Knoth's would enter into a court case if the county was compelled to have them apply for a variance or alter the height of the house. He said this situation would result in additional financial expense to the county and requested the permit be closed out at this time. Commissioner Custer expressed concern that the county's zoning regulations had not been followed. Following a lengthy discussion the Board agreed that the issue involved several misinterpretations, miscommunications and that mistakes had been made by all those involved. The BOCC agreed to schedule a Board of Zoning Adjustment (BZA) work session in 2010 that would include participation from the newly appointed BZA members to review, outline and clarify the process.

MOTION by Commissioner Custer, seconded by Commissioner Austin:

To direct the planning and zoning department and their advisory groups to schedule a public forum regarding this particular case within ninety (90) days. The motion carried unanimously.

The BOCC recessed at 10:20 AM.

The BOCC reconvened at 10:30 AM

Marty Frick, West Custer County Library District Director, presented the BOCC with the Projected 2010 Budget. She requested the Boards ratification of Will Sibbald and Mary Ann Moon for positions on the West Custer County Library District Board.

MOTION by Commissioner Austin, seconded by Commissioner Custer:

To approve the ratification of Will Sibbald and Mary Ann Moon for positions on the West Custer County Library District Board. The motion carried unanimously.

Terry Chambers, Custer County Kids Club (CCKC) Director met with the BOCC and gave a report. She advised the year to date totals are as follows: 27 members; 611 hours served and 148 days served. She gave a breakdown of the children participating: 44% preschoolers, 33% kindergarteners and 23% elementary aged children. Ms. Chambers said special activities were being planned for the winter break. Commissioner Attebery asked if the CCKC was prepared for the 501(c)3 organizational status starting January 1, 2010. Commissioner Custer responded that everything was in place. Ms. Chambers agreed.

Virginia Trujillo, Treasurer met with the BOCC and gave a report. She advised the starting county general balance on November 1, 2009 was \$2,686,742.42 and the ending balance on November 30, 2009 was \$2,675,333.33. She reported that all the properties had sold at the tax sale.

The Hanssen Haus Resource Center (HHRC) and Veteran's Service Office (VSO) report will be rescheduled.

Bob Weisenbach, Tourism Board Member requested clarification on the procedure for the 2010 re-appointment or appointment of tourism board members. He remarked that they had received more applications than positions available. Following a brief discussion the Board advised Mr. Weisenbach to follow the tourism by-laws and present the final recommendations to the BOCC in January 2010 for consideration and appointment.

Laura Lockhart, Social Service Director met with the BOCC and gave a report. She presented the certification of compliance for the administration and operation of its county merit system for the reporting year 2010 for the BOCC Chairman's signature. Commissioner Attebery signed the certification and returned the original to Ms. Lockhart. She remarked that the annual courthouse employee Christmas and New Years celebrations were being scheduled on December 17, 2009 and December 30, 2009 from 12pm to 2pm in the lower level of the courthouse. Commissioner Custer expressed concern regarding the accessibility of the location for the event.

MOTION by Commissioner Custer, seconded by Commissioner Austin:

To close the courthouse from 12pm to 2pm on December 17 and December 30, 2009.

The BOCC met with the County Attorney and the following topics were discussed

- Hamilton File: 100-89-253 the County Attorney is preparing a legal intervention on the court order.
- The County Attorney has completed the review of the Custer County Subdivision Regulations and a letter of recommendations was presented to the BOCC and the Planning and Zoning Director, Jackie Hobby.

- The Diverse Datum agreement has been reviewed and approved by the County Attorney. The BOCC members individually signed the agreement. (original with Diverse Datum and the clerk and recording department)
- Vargas File 101-52-2001 County Attorney presented a resolution to the Board for review and approval.

MOTION by Commissioner Austin, seconded by Commissioner Attebery:

To approve Resolution 09-09 as presented by the County Attorney. The motion carried unanimously.

RESOLUTION 09-09

Jackie Hobby came before the Board of County Commissioners and upon personal information and belief states that Zoning Violations have occurred by Brigido Vargas. IT IS THEREFORE RESOLVED by the Board of County Commissioners that Jackie Hobby give written notice to Mr. Vargas to correct the violation within ten (10) days after the date of the Notice and upon the violators failure to correct the violation within the ten (10) day period or within any extension period granted by the Zoning Official, the Zoning Official, the Sheriff or the County Attorney may issue a Summons and Complaint to the violator stating the nature of the violation with sufficient particularity to give Notice of the charge to the violator.

Dated this 8th day of December, 2009.

Lynn Atteberry

Jim Austin

Carole J. Custer

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

- Any structure 100 square feet or more will require a zoning permit according to the county zoning regulations; therefore all containers will require a zoning permit.
- Chandler File: 100-37-160 non-permitted structure violation notification.
- Wadsworth File: 100-64-300 SUP zoning violation pending legislature decision.
- Medical marijuana caregiver File: 100-64-300 and 101-85-350 presently under the medical marijuana moratorium Resolution 09-08.
- Freeman File: 101-67-600 non-permitted structure violation notification.
- Dunbaugh File: 100-69-801 non-permitted structure violation notification.
- Flick Kennels File: 102-24-150 SUP zoning violation notification.
- Marek File: 101-67-450 un-permitted structure violation notification from the county attorney is in process.
- Moran File: 101-07-100 pending report from the county health inspector.

The BOCC recessed at 12:45 PM.

The BOCC reconvened at 1:00 PM

Dani Walden, Road and Bridge Secretary presented the monthly report for November 2009 to the BOCC. Work completed: equipment preparation for plowing and snow removal; graded numerous road; completed major construction on several roads; hauled road base; repaired and installed signs; removed fire danger signs for the season; removed trees and brush; plowed snow. Work planned: continue with tree and brush removal along snow routes to prevent drifting; grading and graveling roads as weather permits; plow snow; snow cleanup and equipment repairs.

Roger Camper, Wet Mountain Fire District (WMFD) met with the BOCC and reported the WMFD has been petitioned to annex twenty (20) square miles, (12,800 acres) north of the Fremont County line into the WMFD. Mr. Camper distributed three area maps outlining the location of the potential fire district members and said the area encompassed approximately two hundred (200) properties. Following a discussion the Board determined additional logistic and financial feasibility information would be necessary before a decision could be made.

MOTION by Commissioner Attebery, seconded by Commissioner Custer:
To adjourn the meeting. The motion carried unanimously.

The meeting was adjourned at 1:25 PM.

Debbie Livengood, Clerk and Recorder
Attest

Lynn Attebery
Chairman