

HART INTERCIVIC E00718900JB

Draft Minutes

Special Meeting

September 23, 2009

The Board of Chaffee County Commissioners held a Special Meeting on Wednesday, September 23, 2009 in the Commissioners Meeting Room at the Courthouse. 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 and Deputy County Clerk Mandy Jackson.

Following the Pledge of Allegiance, Chairman Holman called the meeting to order at 9 a.m.

Chairman Holman asked for verification from Deputy Clerk Jackson that the agendas were distributed appropriately. Deputy Clerk Jackson stated that the agendas had been distributed appropriately.

Chairman Holman stated that this was a special meeting to consider the final resolution for the Nestle Waters North America, Inc Permit and a resolution for the Nestle Waters North America, Inc. Special Land use Permit. The Board would also consider a request from Nestle Waters North America, Inc. for an easement through County property.

County Attorney Davis presented the Board draft resolution, granting a permit to conduct an activity of state interest in an area of state interest ("1041 Permit"), with conditions, for Nestle Waters North America, Inc. She explained the resolution by sections. She received a comment from Commissioner Giese on Section 2.3 regarding the wording. She proposed a change that would read provided the permittee comply with conditions set forth in section four of this resolution such conditions enable the permittee to comply with the criteria that have not been satisfied or set forth in subsection 2.2. Hopefully it would address their concerns. She knew County Land Use Counsel Green had drafted the original language and did have some concerns with making sure that this was worded with words that she was comfortable with. County Land Use Counsel Green was in a meeting this morning. County Attorney Davis continued stating that she did not think that precluded the Board if they were so inclined to approve the resolution, but she felt that they could tweak that language to make sure that County Land Use Counsel Green was comfortable with this change. Section 3 indicated that the resolution itself would constitute the permit and then Section 4 approved the permit. Then it goes through the various conditions that the Board had been working through during the deliberations. There have been some wording changes to it. She would highlight a section that she knew a lot of folks were struggling with and that was 4.17. Staff had been struggling with making sure that this section reflected the desires of the Board as well as the commitment made by the applicant. She thought that in this section, some of the wording probably wanted some Board discussion as to what they wanted. The version right now had included the clause the future annual contributions. She was unsure if that was what all three commissioners would like to see in that language. Commissioner Glenn had some comments that he gave her the previous morning on 4.20 and 4.21. For some clarification, she did not think that there was anything there substantive but that she would highlight those changes, the most recent changes.

Chairman Holman stated that he would like to discuss 4.17. The original draft that he received on the 15th, he believed covered what they had agreed to earlier. He thought that the new one was an addition and he had an issue with that. The "shall make future contributions", in the original one, they stated that the permittee shall provide documentation that illustrated the amount that was annual local problematic funding

and then they added "shall make future contributions." He was unsure if they ever discussed that in any of the meetings that they show.

Commissioner Glenn added that in most every meeting, they discussed whether or not they would make annual contributions. He knew that he discussed it at length the last time that they deliberated these. He was concerned because the language came out in the conditions when it first started out that they would make annual contributions and then it changed. It stated that they would not make annual contributions but they would make certain contributions community oriented things like that. He was not comfortable with that. He asked that it be changed the last time that they discussed this issue. That was why he recommended that they change it back to make it a requirement that Nestle make annual future contributions to the fund. He thought that they had a lot of people who basically said five hundred thousand dollars, which is a lot of money. There was no doubt about that, but as an endowment that was not a lot of money. He stated that it would generate a small amount of money a year that really would not help too many things in this community but if there were yearly contributions to it over an eighteen year period of time which the permit was being proposed for, then it might get to be a significant amount of money that would benefit folks in our community.

Chairman Holman agreed with Commissioner Glenn. He thought putting the work "shall" in there was maybe a dollar a year.

Commissioner Glenn stated that if was what it means than that was what it meant. He was a little concerned to say fifty thousand or a hundred thousand or whatever but he did think as Nestle had said they intended to be a good neighbor and that was a good opportunity to see if they intended to be a good neighbor.

Commissioner Giese thought that the comment that they had in there was in reviewing that and what was the long term in this firm and how it would continue to stay at an amount that would provide enough funding for the issue that they talked about science and environmental. Whether it was "shall" or taking the word "shall" out, they make future annual contributions and it was up to them what the amount was. He would be comfortable with the statement if the word "shall" was taken out of it and that they make annual contributions.

Chairman Holman stated to take "shall" out and just leave it that they "will". He then asked Commissioner Giese what that would do.

Commissioner Giese stated that it did not change anything.

Chairman Holman stated that his concern was that it was voluntary whatever contributions that they made. He would hope that they would be substantial. He did know how they got there.

Commissioner Glenn stated that if it was the resolution whether it was "shall" or not or whether it stated no less than five hundred thousand and made annual future contributions, it still stated that they were going to make future annual contributions. He continued that it was not voluntary, it was mandatory. He was fine without the word "shall" being there because he felt that it still accomplished the same thing.

County Attorney Davis pointed out that Nestles comments on this was that they felt that they were committing to annual giving to organizations but not necessarily part of the endowment. She felt that there were two things going on whether the contributions had to be part of the endowment.

Chairman Holman asked if that was what the resolution stated.

County Attorney Davis replied yes. She stated that right now there was language in there that would require annual contributions to the endowment.

Chairman Holman stated what he recalled was that they were going to contribute to other things. The endowment took care of itself, the interest on it.

Commissioner Glenn thought that there was discussion both ways to whether there would be a lot of donations throughout the community to different charitable organizations. He thought there were discussions made whether or not this would remain at half a million or have annual amounts added to it. He did not have all the information in front of him. If Nestles ever committed to make future contributions within this fund or if they did not, maybe they did or maybe they did not. Maybe they represented it here or maybe in planning commission. He did not know but certainly he had heard several times it was stated. He did not know with any information in front of him.

Commissioner Giese stated that it was his understanding that there would be annual contributions to this endowment fund. On a yearly basis they would report what they have done in the community and all aspects that was his understanding.

Commissioner Glenn stated that if you did not put a specific dollar amount in there, then it was up to Nestles. If they wanted to put a penny a year in there, again, he thought that it was up to them to determine if they were going to be a good neighbor in Chaffee County as they have stated over and over that they would be.

Commissioner Giese agreed with Commissioner Glenn.

Chairman Holman asked if they would change it to say "and will make" annual contributions.

Commissioner Giese stated that was fine. He stated it could say "and make" annual contributions, not "will" or "shall."

Commissioner Glenn stated that was fine with him.

Chairman Holman stated that he would like to add back, the annual review, permittee shall provide documentation that illustrates the amounts of its annual local problematic funding.

County Attorney Davis stated to make sure that the amount be included in the reports so that it would read the permittee shall provide information that documents the nature amount of its annual contributions and local problematic funding.

Chairman Holman continued with the next one, 4.20. He asked Commissioner Glenn whether the word should be division instead of department.

Commissioner Glenn stated that it was some clean up language. This morning he had County Attorney Davis to put in on 4.20 river wade fishing prior to operations to the project that the permittee shall dedicate the wade fishing easement to the Department of Wildlife. He asked that put in there where it states permittee shall dedicate a permanent wade fishing easement to the DOW. He just wanted that "permanent" statement in there. Nestle voluntarily stated that they were going to do a permanent conservation easement on the land. He would like to have a permanent easement that went along with that. He stated that in 4.21 it was the same situation, to make the

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easement permanent. If the DOW identified that it was acceptable for a fishing easement on the Bighorn Springs, then he wanted it to be permanent and it was up to the DOW.

County Attorney Davis stated that she did have the language printed out.

Chairman Holman stated that the next item was 4.25.

Commissioner Glenn stated the language that he wanted in that section was on local construction jobs. When they deliberated this, he thought that they all agreed that they wanted as much dollars going to local contractors and local suppliers that they could possibly have. The way he read this, he thought that it may have been inferred that they would use local material suppliers and workers, rather than that what he wanted it stated clearly that in both the initial construction project and any repairs or other things that happen in the future that they will use local workers, local contractors, and local material suppliers. The Board all agreed.

Chairman Holman moved onto 4.26.

Commissioner Glenn thought that this was the one that Chairman Holman had brought up during deliberation which was while Nestle agreed to hire fifty percent of the drivers if they were local and available. He thought that Chairman Holman's concern and request was that they would endeavor to hire up to one hundred percent if they were available. He would like that as well. He asked that they at least put in there to get as many local jobs as possible.

Chairman Holman agreed. He moved to 4.29 which was limitation on project depletion.

Commissioner Giese added that was municipal water rights.

County Attorney Davis added that it was to clarify that they were talking about the same water rights portfolio in 4.29 that was discussed at the bottom of 4.28. She had spoken with County Water Counsel Jim Culichia, who confirmed that was correct. Basically Aurora owned municipal water rights. The question was whether they were Lake County Water Rights or Town Water Rights, the nature of the water rights. They were actually Aurora's Municipal Water Rights.

Commissioner Glenn stated that it was not like County Municipal Water Rights. It was water rights that Aurora acquired through dry ups of agricultural land in Lake County being used for Aurora's Municipal Water System. He asked County Attorney Davis if that was right.

County Attorney Davis stated that was correct.

Chairman Holman moved to 4.35. He stated that the concern was the continuous recording device. The Board had talked about it for fifteen minutes and that "continuous" was an issue for some reason. He asked if it was a big deal.

Commissioner Glenn responded that after spending Monday at the State Engineer's Consumptive Rules Committee and listening intently on the discussion there, he thought that it was a standard to have continuous monitoring and continuous measuring from both the state's perspective and the water right world. If it was automatic, it was continuous. If it was manual, you go out and read it ever once in awhile. He stated that this was what County Water Counsel Culichia was talking about.

Chairman Holman stated that he was fine with that. He moved on to 4.37.

Commissioner Giese stated that if he read that right, it stated that if in this process, if this was the right one, that if there was more plant vegetation put in the wetlands, required by somebody, then that group had to make the augmentation. He asked if that was how he read that. He read in there, which he thought was a little bit different, but that he was not against it. He gave an example. If they would like to see more plant life in the wetlands area at Ruby Mountain, was this going to cause more consumptive use for that group or organization to make up that difference and in water.

County Attorney Davis stated that it had to do with the wetlands that were being constructed by the applicant.

Commissioner Giese stated aid that if someone wanted it up and beyond that, then they would make up the difference.

Commissioner Glenn asked if that was what he felt that paragraph read right now.

Commissioner Giese asked if that was how he interpreted that.

Commissioner Glenn stated that he needed to read it closely.

Commissioner Giese stated that maybe he misunderstood it.

County Attorney Davis commented that she interpreted it as applying to Nestle.

Commissioner Giese stated that the point being was that any consumptive use would be made up by somebody.

County Attorney Davis stated that the obligation in the first sentence was the permittee.

Chairman Holman agreed that Nestle make up the augmentation. He thought that it became cumbersome about midway down and talking about the design stake holders whoever those might be. He suggested making sure that was not implied. He stated that he was ok with the way it was.

Commissioner Giese stated that he was ok with it also. It stated that the augmentation water source, other than the water supplies, contributed by the design stake holders the desire to enhance the wetlands configuration with greater water consumptive feature.

County Attorney Davis commented that she thought that could happen but again, the County's only authority here was to make sure that actually happens by making sure that the permittee made sure that happens. So the permittee was ultimately responsible for it but the augmentation could come from others.

Chairman Holman moved onto 5.1 item B. He stated that there would be no increase in the quantity of water size of the area affected by the project.

Commissioner Glenn stated that this was one of his recommendations. When he read that, he did not feel that it was clear that they talked specifically about increasing the quantity of water which he thought was very important. This had to do with technical revisions that the staff may or may not be able to approve. These were the specific

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areas that it would not happen through a staff, an approval process. The way he read it at first, there would be no increase in the size of the area affected by the project. He felt to do that meant to him that the expansion of the size of the property. He wanted to make sure that they added quantity of water in there. He wanted to make sure that any request to expand the quantity of water was very specific. It immediately triggers a new application process.

Chairman Holman thought it was covered in other areas.

Commissioner Giese stated that he was fine with that.

Chairman Holman thought that it was. He asked if that was it.

Commissioner Giese asked the Board if they wanted to have a resolution number and vote on this or did they want to go over the Special Land Use Permit and vote on them afterwards.

Chairman Holman stated that they would have to vote on them separately. He asked County Attorney Davis if that was correct.

Commissioner Giese made motion that we approve Resolution Number 2009-42 as reviewed by the County Attorney and the Commissioners on this date. Commissioner Glenn seconded the motion. On the question, the motion carried 3 – 0.

Chairman Holman stated that the Board had gone through a lengthy process. They felt that they had done what they felt was right. The Board was going to move on. They had been through the process. Next they are going to consider a request from Nestle Waters of North America for a Special Land Use Permit.

The Board was presented draft resolution, approving application of Nestle Waters North America, Inc. for a Special Land Use Permit.

County Attorney Davis stated that this resolution would address the application for a Special Land Use Permit that would pertain to the commercial spring development, the pipelines, and truck loading station. This is governed by a separate set of the County's regulations and is under the County's Land Use Code. The resolution summarized the application. The meetings have been held and the criteria are applicable to the Special Land Use Permit which was very distinct from the 1041 review criteria and those dealing with various impacts to safety, water pollution, offensive noise, offensive vibration, offensive smoke, offensive dust, odor, heat, and glare. A finding that provided conditions were complied with the use would not result in those various criteria affecting the surrounding property values. Then the conditions on the resolution that would approve the Special Land Use Permit with conditions, she did not think that she would go through those as those are based on recommendations from the County's planning commission. She stated that they tied in some of the criteria that were similar to the 1041 permit dealing with the technical revision to this Special Land Use Permit as well as tying the link of that permit into the length of time for the 1041 Permit. There had not been not been any changes made to this since she circulated it. There were some editorial changes to it but nothing substantive.

Chairman Holman asked the Board for discussion.

Commissioner Glenn stated that he did not have anything. He thought that it was recommended by the Planning Commission, as long as the 1041 was complied with, that is the only other thing you might note.

Commissioner Glenn moved that we approve Resolution 2009-43. Commissioner Giese seconded the motion. On the question, the motion carried 3 – 0.

County Attorney Davis stated that the agenda item was to consider the request from Nestle Waters North America, Inc for an easement through County property. She asked County Development Services Director Reimer to address that, along with the 1041 Permit, which referred to the cost reimbursement fund. There was a separate document that was intended to be a living document that could be revised as needed. She thought that it would be appropriate to have the Board approve that which could be done by motion.

Chairman Holman asked Commissioner Glenn if he had reviewed this.

Commissioner Glenn stated that he had.

Chairman Holman stated that he also had and did not have any issues with it.

Commissioner Giese stated that there were a couple of revisions. He could not see anything that was significantly different than what was presented before.

Commissioner Giese stated that they need a motion to accept the Chaffee County Cost Reimbursement Fund.

County Attorney Davis thought there was a little bit of reorganizations since the last meeting just to make it clear what the steps were for applying for funds. Out of this, the intent was that this fund would be funded by Nestle seven days from today. She continued to say that there was a change that reflected that here that coincides with the statement that was made in the resolution. Commissioner Glenn had asked for a statement to clarify that the County had the final say in the need qualifications scope of any consultants or technical specialists that the County might need to engage to review that and so that had been added.

Chairman Holman stated that was good and it was probably better.

Commissioner Glenn commented on the resolution that it tied the reimbursement fund directly to the resolution so it was in affect, legal and binding.

County Attorney Davis stated that was correct and it had to be complied by virtue of the conditions and the Special Land Use Permit. She meant the 1041 Permit.

Commissioner Glenn thought that it was important because he thought that particular document provided an awful lot of the protection that a lot of the citizens concerns were raised. Based on as far as cost to taxpayers, cost to the County to make sure that it was legal and binding and tied to the resolution.

Chairman Holman and Commissioner Giese agreed.

Commissioner Giese moved that we approved the Chaffee County Cost Reimbursement Fund for Nestle Waters Project as presented. Commissioner Glenn seconded the motion. On the question, the motion carried 3 – 0.

Chairman Holman moved on to the easement. He asked County Development Services Director Reimer to give the Board some information.

Director Reimer stated that there were a couple of options. They did not have the easement out for appraisal right now. The appraiser indicated two weeks ago that it would take approximately four weeks to complete.

Chairman Holman stated that this issue would be discussed at a later date.

Commissioner Giese made a motion to close the Special Meeting of September 23rd. Commissioner Glenn seconded the motion. On the question, the motion carried 3 – 0. The meeting adjourned at 10:47 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.