

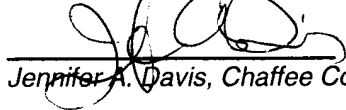
**Draft Minutes**  
 Special Meeting  
 June 16, 2009

The Board of County Commissioners met at the Chaffee County Courthouse in the Commissioners Meeting Room for an Executive Session to receive legal advice. Board members present were Chairman Frank Holman, Commissioner Tim Glenn and Commissioner Dennis Giese. Also present was County Attorney Jenny Davis.

County Attorney Davis stated C.R.S. 24-6-402(4)(b) for the purpose of receiving legal advice on legal questions concerning the Nestle Waters application for a 1041 Regulation and a Special Land Use Permit.

Commissioner Glenn made a motion that we go into executive session under the statute C.R.S. 24-6-402(4) (b). Commissioner Giese seconded the motion. On the question, the motion carried 3 - 0.

*I, Jennifer A. Davis, Chaffee County Attorney, do hereby attest that the portion of the executive session held on June 16, 2009, during which the recorder was directed to take no minutes constituted a privileged attorney-client communication.*



Jennifer A. Davis, Chaffee County Attorney

*I, Frank Holman, Chairman of the Chaffee County Board of County Commissioners, do hereby attest that the portion of the executive session held on, June 16, 2009, during which no minutes were taken was confined to a topic authorized for discussion in an executive session.*



Frank Holman, Chairman

Chairman Holman stated no decisions had been made during the executive session.

The Board of Commissioners held a Special Meeting at the Courthouse in the Commissioners Meeting Room. 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, County Special Land Use Counsel Barbara Green, County Water Counsel Jim Culichia, County Clerk Joyce Reno and Deputy County Clerk Merrillou Cicerelli.

Following the Pledge of Allegiance, Chairman Holman called the meeting to order at 9:15 a.m.

Chairman Holman stated that before he opened the public hearing the Board had some procedural administrative issues that needed addressed. He asked County Attorney Davis to present the issues.

County Attorney Davis stated there was there was an issue involving a procedural matter with the application, which the Board needed to address. She stated that was concerning a requirement of the County regulations that required that application fees be brought current. The language of the regulation stated that the permit authority would take no action or would suspend further action on the application until all fees and expenses related to the application review process had been paid. The staff had prepared a spreadsheet showing the expenses that had been incurred to date in connection with the application. A draft of that spreadsheet was presented to the applicant in late April and that had been updated in early May. The applicant had requested various copies of these invoices from the consultants. Those copies had been provided to the applicant. The County regulations further required that the County maintain records of the use of the application fee and to make those records available for inspection by the applicant. Those records had been made available in early May to the applicant. The applicant had then requested an invoice before paying the fees. She stated that her paralegal had prepared this invoice and had attempted to email it to the applicant in mid-May. The

applicant did not receive the invoice, but they did receive the spreadsheet. The applicant had notified her paralegal that they did not receive the invoice. She sent them an invoice on June 2<sup>nd</sup> and they received that on June 2<sup>nd</sup>. They have not received payment on the amount due yet. The Board needed to determine what no action meant. Therefore it could mean that the Board could not start deliberation and that was the termination they needed to determine by the Board. She believed that the applicant had some comments on this administrative issue as well.

Nestle Waters Project Manager Bruce Laureman, 2690 Park Drive, Helena, Montana, stated he wanted to make something perfectly clear, and that was that they intended to pay all of the expenses that the County had endured associated with this permit application. He did not feel that they had any real discrepancies on what the County had billed them. He was a bit concerned because they had not found out until yesterday when they contacted staff that this issue could stall the proceeding further. Their understanding had been that they would have to make a payment before a decision was made ultimately on their current application. They had received various information, such as a spreadsheet that was incorrect. Then they received the corrected one and various invoices from some of the consultants and the invoice which he had with him. They had been working with county staff to get an invoice that he could get approved. Once he received a clean invoice, he would then send it on to corporate to be approved, but what had been provided by the staff did not have the detailed information that was needed for approval by the home office. They really would like to pay their bill but he needed it to be put in a form that would be consistent with their record keeping. Nestle Waters had originally had made a payment of \$33,000 to the County. On the invoices that they had received, he was not able to determine if any of that money had been credited to them.

County Attorney Davis stated that she had sent an email to Ms. Strablizky on two occasions that addressed that issue.

Project Manager Lauerman questioned County Attorney Davis on this issue.

County Attorney Davis stated that the money that had been received from Nestle Waters was the permit fees for the Land Use Application Fee and the County would provide records on how that application fee was being used.

Project Manager Lauerman stated that the invoice he had received was \$140,000 which was a significant invoice that would need proper documentation. He quoted items from the regulations that dealt with payment of fees to the County and how they would be structured. He did not feel that the County had followed their own code on these installments. He was not really concerned about that at this time but he would like to have a bill that he could pay the County what they owed. He was very concerned that it was not until after Nestle Waters had contacted the County yesterday that they found out that this issue would stall these proceedings.

Chairman Holman stated that his biggest concern was that if they were so lucky as to reach a decision today, from what he understood, in the regulations they would not be able to do that without payment.

Commissioner Giese agreed with the part about that the applicant had asked for an itemized invoice. He felt that the County had an obligation to sit down with them and work out or decide on first what the fee was and to give this in a form that worked for them. He understood that they needed to forward the bill on to their corporate office. He stated it was very disappointing that they had not gotten to that point already. He also had not been aware of this problem until yesterday either that the fees had not been paid. There seemed to be a lot of finger pointing but no resolution. It was a lot quicker to get to resolution if people sit down and talk about things and get to that resolution part as opposed to a point of impasse. He had mixed emotions on what should be done.

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County Land Use Counsel Green asked County Attorney Davis if all of the referral agency fees had been paid, because under Section 6 it stated that no hearings would be held if those fees were not paid.

County Attorney Davis stated that there were no fees from the County's referral agencies. The fees were from consultants.

Commissioner Giese asked if the County had paid the consultants was the County waiting for reimbursement from Nestle Waters.

County Attorney Davis stated that was correct.

Commissioner Glenn commented on this issue and his concerns. He felt that deliberations should not be conducted until the fees had been paid.

County Land Use Counsel Green stated that Section 2-202.2 stated that if the application exceeded the initial deposit the applicant shall present within 10 working days following receipt of such notice to the permit authority certified funds for the difference between the deposit and the application fee. She stated the first thing the County had to do was to provide the applicant some type of notification. She stated a notice could be anything from a phone call saying that the application fee had been exceeded and you are going to owe more. According to the code, they would have 10 working days within to deal with that, unless you have put into place the installment system to which Nestle Waters Project Manager Lauerman had eluded. Secondly the County's obligation under the code was to maintain accurate records of how the fees were used and make the record available to the applicant and the public at reasonable times. In terms of how an applicant needed to justify his own expenditures within his own corporate structure was not relevant to the County. Most applicants would work that out internally. All the County had to do was make a record of the expenditures available. The record should be in form of how the County generally keeps records of expenditures.

County Attorney Davis stated that record was the spreadsheet that she had referred to. The Commissioners had seen various copies of this spreadsheet, which she would forward on to Nestle Waters. This was a document that changes as the County gets new invoices from consultants, but the spreadsheet was what was originally sent to Nestle Waters when they requested an invoice. She had sent an email stating to let this email serve as an invoice and the total amount due. She stated that her Paralegal had prepared a more formal legal document at Nestle Waters' request. She felt that Nestle Waters had clearly been notified of the amount of money that was due. Nestle Waters had told her that they wanted more backup information on contracts and that information had been sent out about the same time as the last meeting, around May 21<sup>st</sup> and then again the formal invoice was sent out on June 2, 2009.

Project Manager Lauerman stated he would like to respond to some of these comments. He stated that Nestle Waters wanted to pay their bill. They had indicated that all along. They had been working hard with the staff to get the information that they needed to pay the bill. They were committed to pay the bill regardless of the outcome or decision made on the application. He wanted to work cooperatively with the staff to find out what they were being billed for and in a form that they could pay. The original spreadsheet that had been sent to them had mistakes and they had to wait for the corrections. He would like the invoice to have line items and documentation for the line items. The spreadsheet that he had received had additional estimated invoices on it. He could not tell if he was suppose to pay the additional estimated items and it had no record of the deposit that they had made. He could not tell if this included the original \$33,000 deposited and if they had been credited for that or not. He stated this was just poor accounting. They had been requesting for several weeks now to have decent accounting. He was very frustrated by this. There was no benefit to them for not paying this bill, if they had known that this would cause a delay in the proceedings, which they had just found out yesterday. He guaranteed them that they would have been much more aggressive about this.

Chairman Holman stated that the Board had found out about this yesterday also that this could cause a delay. He was very concerned and disappointed about the way this was headed but he agreed that before they could start deliberations, they needed to have the bill paid and be up to date on all of those things.

Commissioner Giese believed that all of the parties involved were here today. Instead of settling down and having a meeting of deliberation, he felt that this time would better be spent to have both Nestle Waters' staff and the County staff sit down and hash out all of the particulars of the payment that was due. Then there would at least be an understanding of what was paid and what was not paid. He was unhappy that this was not rectified before this meeting started. It was not until yesterday that he recognized the problems that this was going to cause. He felt that before the Board could move forward on this at the very least there needed to be a rectification of the bill. Everyone has agreed how much was owed and when the check was going to be received.

County Land Use Counsel Green stated that all the regulations required from the County a notice of the amount that was due. In her mind that meant that the County could send a notice saying you paid \$30,000, you owe a million, the difference was X and then they have to make records available for inspection that it.

Commissioner Giese asked if this had to be in the form of a motion to postpone the deliberation.

Commissioner Glenn had a very specific question for Nestle Waters. He asked after today when this issue was rectified as far as what the dollar amount was for and what the dollars were, how long would it be before the County would be paid. The reason was so that they could work this into their calendars to where they did not prolong this for another two months.

Project Manager Lauerma stated that he could not say for certain right now but should be able to let them know before the end of the day. He would get this expedited as soon as possible. He would guess that it could be completed and paid within a few weeks and no more than 30 days. He had been told yesterday to show up with a check but he was not able to accomplish that.

County Land Use Counsel Green stated that the regulations did allow the Board to establish a payment schedule to make sure that everything was cleared. Perhaps right now the Board should determine when the total amount remaining is due and whether the Board would accept installments on that or the whole amount and when that was due. One of the things the applicant raised as a concern was that they really did not know when it was due.

County Attorney Davis thought the installment provision was to make sure that the balance did not fall below \$1,000 at anytime. They have been below that amount for the whole time.

Project Manager Lauerma stated that he was not concerned about an installment provision.

Chairman Holman stated that they needed to determine when they would have the next meeting and that would have to be based on when the County received the check from Nestle Waters.

Project Manager Lauerma felt that if the Board would schedule a meeting for two weeks from today as that would be the target date for payment to be paid.

Discussion was held on what date would work. It was concluded that everyone would be available on July 1, 2009 in the afternoon.

Commissioner Giese stated that there had also been another objection received.

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Chairman Holman stated that the Board had not opened the public hearing yet and wanted to know how to handle this.

County Attorney Davis stated that she had received a written objection from CCFS authored by Jay Hake. She read the objection.

Chairman Holman asked for comments from the Board.

Commissioner Glenn commented that at the last public hearing, he had stated that this public process could be a revolving door, where one entity stated they would do this and the public had the comment that they thought this or that. He stated going back to that he felt that it had been fairly clear that staff comments and the public's testimony had a great amount of concern with Big Horn Springs. The public stated very clearly that they would like to see a conservation easement on that property. He thought that what happened was you had a process, with comments, and then Nestle Waters reacting to those comments and to him that was just the process that happened. He thought that Nestle Waters came to where the public was requesting or at least in the public testimony. For the Board to open this back up to a written amendment, it would be meaningless because the Board closed the public hearing for written testimony before the last hearing date. He believed what had happened was the proper way of this happening. He did not feel that they had to take more public comment on Nestle Waters amendment because he felt that was what was being requested and being asked for by the public and a lot of other venues.

Commissioner Giese felt that the only way the applicant could make any changes to the application was by orally amending the application because the Board had closed all written communication. He agreed with Commissioner Glenn that this was what the public had testified that they wanted Nestle Waters to do on the property. He would have felt differently had they added something to the application but they had taken away from the application.

Chairman Holman agreed that this amendment simplified the application. He did not see any reason to reopen the public hearing process. Therefore, the Board of Commissioners would not reopen the public hearing on this application.

Commissioner Glenn made a motion to not reopen the public hearing concerning the amendment to the Nestle Waters 1041 and Special Land Use Permit application in either written form or public testimony form. Commissioner Giese seconded the motion. On the question, the motion carried 3 – 0.

Project Manager Lauerman asked if there was any other administrative or procedural issue that would need to be taken care of prior to the next meeting. There were none.

Chairman Holman asked if staff and the applicant had agreed to work together today to resolve the billing issue.

Everyone agreed they were available to work on this issue.

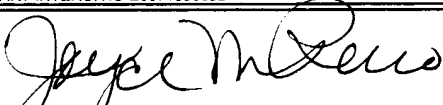
Chairman Holman opened the public hearing for deliberation on the Nestle Waters application at 9:49 a.m.

Commissioner Glenn made a motion to continue the deliberation part of the public hearing to consider the 1041 and Special Land Use Permit for Nestle Waters to July 1, 2009 at 1:00 p.m. Commissioner Giese seconded the motion. On the question, the motion carried 3 – 0.

Commissioner Glenn made a motion to close the June 16, 2009 Special Meeting. Chairman Holman seconded the motion. On the question, the motion carried 3 – 0. The meeting was adjourned at 9:52 a.m.

Attest:

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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.