

**MINUTES OF THE BOARD OF  
CARBON COUNTY COMMISSIONERS  
REGULAR MEETING  
Tuesday, September 1, 2009  
County Courthouse, Rawlins, Wyoming**

The regular meeting of the Board of Carbon County Commissioners (BOCC) commenced Tuesday, September 1, 2009 at the County Courthouse in Rawlins, Wyoming. Attending the meeting were Chairman Terry Weickum, Vice Chairman Jerry Paxton; Commissioner Charles C. Young; County Clerk Gwynn Bartlett; County Attorney Cindy DeLancey; and Deputy Clerk Kathy Turner.

Chairman Weickum called the meeting to order at 9:10 a.m.

**VOUCHERS**

Commissioner Paxton moved to approve the report of expenditures in the amount of \$165,100.24. Commissioner Young seconded and the motion carried unanimously.

Vendor	Detail Line Description	Total
AG JOURNAL	SUBSCRIPTION	\$45.00
ALBANY COUNTY TREASURER	GRANT WRITING & MGMT WORKSHOP	\$50.00
ALSCO, AMERICAN LINEN DIVISION	SHOP SUPPLIES	\$247.33
AMERICAN CORRECTIONAL ASSOC	JAIL DUES & SUBSCRIPTIONS	\$75.00
ARCA SEARCH	ARCHIVE PROJECT DOWN PAYMENT	\$10,000.00
ARLINGTON OUTPOST	VEHICLE MAINTENANCE/FUEL	\$88.67
ART FLORAL	R&B SUPPLIES OFFICE	\$36.00
AVAYA, INC	SERVICE AGREEMENTS	\$98.01
BEHAVIORAL INTERVENTIONS	MONITORING SERVICES	\$203.18
BOB BARKER COMPANY, INC.	JAIL SUPPLIES	\$234.55
BORAH, JOHN	LAWN SERVICES	\$75.00
BOYS & GIRLS CLUBS OF CARBON CTY	08-09 CSBG REIMBURSEMENT	\$6,000.00
BRESNAN COMMUNICATIONS	TV SERVICES	\$79.14
BROWN, STEVEN	REIMBURSEMENT	\$633.56
C N A SURETY	NOTARY BOND	\$50.00
CARBON COUNTY CHILD DEVELOPMT	08-09 CSBG REIMBURSEMENT	\$6,000.00
CARBON COUNTY COOPERATIVE EXT	VEHICLE MAINTENANCE SUPPLIES	\$22.48
CARBON COUNTY TREASURER	VARIOUS CASH ITEMS	\$593.93
CARBON COUNTY TV & ELECTRONICS	BATTERIES	\$8.97
CARBON MERCANTILE CORPORATION	UNIFORM PANTS	\$2,391.08
CARBON POWER & LIGHT INC	ELECTRICAL SERVICES	\$1,331.07
CASPER WINNELSON CO	PARTS	\$994.89
CBM FOOD SERVICE	JAIL FOOD	\$3,300.65
CDW GOVERNMENT, INC.	IT EQUIPMENT	\$9.00
CENTURYTEL	PHONE SERVICE	\$172.19
CHAMBERS, JOHN D., P.C.	LEGAL SERVICES	\$1,118.00
CHANDRA, V. RAJA-HEALTH OFFICER	CONTRACT WAGES	\$2,691.00
CHEYENNE FREIGHTLINER	PARTS	\$676.26
COLONIAL FLAG	FLAG	\$297.38
COMPLIANCE POSTER COMPANY	COMPLIANCE POSTERS	\$68.20
COMPUTER SOFTWARE ASSOCIATES	WEBHOST FEE	\$250.00
CONLEY, MARCI	MILEAGE	\$265.00
CSK AUTO, INC.	VEHICLE SUPPLIES	\$21.98
CYR, NANCY	MILEAGE	\$23.50
DAILY TIMES	ADVERTISING	\$2,002.88
DALLIN MOTORS INC	SHERIFF MAINT & REPAIR VEHICLE	\$305.00
DELEON, JOHN	LEGAL SERVICES	\$3,115.00
DUBOIS TELEPHONE EXCHANGE	DIXON AIRPORT TELEPHONE SVCE	\$87.54
EAGLE UNIFORM SUPPLY	MATS	\$186.90
ENGINEERED BUILDING SPECIALTIES CO.	FLAGPOLE TRUCKS	\$306.00
FARMER BROTHERS COFFEE	OFFICE SUPPLIES	\$95.40
FORSTER LANDSCAPE & CONSTRUCTION	REPAIRS	\$135.00
FRANCE, TARA	TRANSCRIPTS	\$3,554.75
FREMONT MOTORS-RAWLINS	PARTS	\$302.67

GALE, GWEN	MILEAGE	\$92.00
GALLS, AN ARAMARK COMPANY	PARTS/SUPPLIES	\$237.40
GOSVENOR, MAXINE	MILEAGE	\$18.00
GRAPHIC SPORTS	ENVELOPES	\$145.00
GREATER WY BIG BROS/SISTERS	REC MATERIALS & SNACKS	\$1,800.00
HASCO INDUSTRIAL SUPPLY	PARTS	\$124.88
HETTGAR, BRIDGET M RN	MILEAGE	\$79.00
HIGH PLAINS POWER	ELECTRICAL SERVICE	\$592.41
HILLCREST SPRING WATER, INC.	SUPPLIES	\$78.55
HILLTOP CONOCO	FUEL	\$104.51
HI-TECH AUTO	SHERIFF MAINT & REPAIR VEHICLE	\$138.38
HORIBA INTERNATIONAL CORP.	SUPPLIES	\$57.28
HYLAND ENTERPRISES	WELDING SUPPLIES	\$115.00
IKON OFFICE SOLUTIONS	COPIER RENTS	\$4,130.73
INTERMOUNTAIN RECORD CENTER, INC.	FILM CARTRIDGES/SET UP/SCAN FILM	\$948.33
J H KASPAR OIL COMPANY	FUEL	\$5,164.94
JACKALOPE PRINTING	SUPPLIES	\$834.21
JUVE, JANE H	LEGAL SERVICES	\$1,250.74
KENCO SECURITY AND TECHNOLOGY	ALARM MONITORING	\$34.00
KIDS CARE	CSBG REIMBURSEMT FOR BLANKETS	\$190.80
KILBURN TIRE COMPANY	TIRE MAINTENANCE	\$50.00
KING SOOPERS CUSTOMER CHARGES	MEDICAL SUPPLIES	\$95.65
L & L ELECTRIC	ELECTRICAL REPAIRS	\$815.78
L N CURTIS & SONS	BUMPER STICKERS	\$956.23
LAWSON PRODUCTS INC	PAINT & SUPPLIES	\$186.35
LONG BUILDING TECHNOLOGIES, INC.	BUILDING REPAIRS	\$1,695.72
LOVE AND LOGIC INSTITUTE INC., THE	WORKBOOKS	\$99.95
MATTHEW BENDER & CO, INC.	WY REV STATS	\$816.30
MEDICAL ARTS PRESS	APPT CARDS	\$45.00
MEMORIAL HOSPITAL OF CARBON CTY	MEDICAL SERVICES	\$12,951.10
MERBACK AWARD COMPANY	SUPPLIES	\$257.91
MOELLER, MARIE	CLEANING SERVICES	\$162.50
MPM CORP / EVERGREEN DISPOSAL	GARBAGE SERVICES	\$97.50
MUDDY GAP LLC	FIRE PRO UTL WATER/GARBAGE	\$90.00
MURANE & BOSTWICK, LLC.	LEGAL SERVICES	\$1,718.91
NATIONAL BUSINESS SYSTEMS	POSTAGE	\$4,060.00
NICHOLSON, CHRIS	WITNESS FEE	\$30.00
NICHOLSON, CHRISTINA	WITNESS FEE	\$30.00
OUTREACH SCHOOL	PLAY THERAPY INSTITUTE	\$125.00
OVERHEAD DOOR CO.	DOOR REPAIRS	\$199.50
PAGE ONE	PAGER SERVICE	\$11.11
PERSONNEL EVALUATION, INC.	PEP BILLING FOR JULY09	\$140.00
PHILLIPS 66-CONOCO-76	FUEL	\$776.13
PICKETT, THOMAS Y	INSTALLMY ON VALUATION CONTRACT	\$5,250.00
PITNEY BOWES	ADMIN POSTAGE	\$280.50
PLAINSMAN PRINTING & SUPPLY	CASEBINDERS & LABELS	\$592.65
POTTER, SHAWNA	MEALS/MOTEL FEES	\$709.18
PRO-CHEM INDUSTRIAL, LLC	SUPPLIES	\$385.07
PUBLIC HEALTH FOUNDATION	MEDICAL BOOK	\$43.90
PUBLIC SAFETY CENTER, INC	MASKS	\$599.44
QUILL CORPORATION	OFFICE SUPPLIES	\$826.06
QWEST	PHONE SERVICES	\$707.29
RAWLINS AUTOMOTIVE	PARTS	\$185.91
RAWLINS FAMILY MENTAL HEALTH CTR	EVALUATION	\$750.00
RAWLINS GLASS	WINDSHIELD	\$288.29
RELIABLE	OFFICE SUPPLIES	\$334.24
REMICK, SHELIA	POSTAGE	\$6.54
RESERVE ACCOUNT	ADMIN POSTAGE	\$10,000.00
ROCKY MOUNTAIN POWER	ELECTRICAL SERVICES	\$5,604.75
ROSCOE STEEL & CULVERT CO	R&B MATERIALS CULVERTS	\$803.14
RYAN ELECTRONICS INC	PARTS	\$18.50
S E D MEDICAL LABORATORY	MEDICAL SERVICES	\$111.11
SARATOGA AUTO PARTS, INC.	PARTS	\$1,143.93
SARATOGA SUN	ADVERTISING	\$1,460.89
SARATOGA, TOWN OF – WATER	SEPT09 LEASE PAYMENT	\$2,000.00

SHEA, DIXIE F	MILEAGE	\$24.00
SHEEN LAW OFFICE	LEGAL SERVICES	\$1,072.00
SHELL FLEET PLUS	FUEL	\$166.91
SHEPARD'S	FUEL/REPAIRS	\$511.03
SHIVELY HARDWARE	PARTS	\$356.71
SNAKE RIVER PRESS	NEWSPAPER ADS	\$330.00
SOURCE GAS	GAS SERVICE	\$1,852.38
SRIDHARAN, P V MD	MEDICAL SERVICES	\$125.00
STANLEY SECURITY SOLUTIONS	REPAIRS/MAINTENANCE CONTRACT	\$2,873.00
STAPLES ADVANTAGE	OFFICE SUPPLIES	\$878.44
STATE OF WYOMING (A&I)	MAINFRAME ACCESS	\$22.18
STEPHENSON, LEE ANN	MILEAGE	\$34.80
T.W. ENTERPRISES, INC.	MAINTENANCE/KEYS	\$2,741.70
TERMINIX	PEST CONTROL	\$65.00
THE BOARDWALK	ROPE REPLACEMENT	\$48.95
TOMORROWS PROMISE	SUPPLIES	\$3,800.00
TRADING POST	FUEL	\$279.81
TRIPLE XXX CONTRACTING, INC.	GARBAGE SERVICE	\$50.00
TRUE VALUE OF RAWLINS	PARTS	\$168.76
UNION TELEPHONE COMPANY	PHONE SERVICES	\$564.40
VALLEY OIL COMPANY	FUEL	\$1,574.50
VAN'S WHOLESALE	PAPER SUPPLIES	\$405.61
VERIZON WIRELESS	CELL PHONE SERVICE	\$452.79
VF JEANWEAR L.P.	UNIFORM PANTS	\$200.00
WATERTOWN HOTEL	ROOM CHARGES	\$1,241.52
WEEMS, LORETTA	SALARY	\$3,100.92
WEINERT, HERMAN R	MILEAGE	\$40.20
WEST PAYMENT CENTER	MONTHLY INFORMATION CHARGES	\$334.40
WESTERN LIVESTOCK JOURNAL	SUBSCRIPTION	\$45.00
WILSON, MARGARET	SEWING SERVICES	\$18.00
WRECK-A-MEND	PAINT STRIPES	\$656.00
WY DIESEL SERVICE	PARTS	\$84.81
WY DIVISION OF VICTIM SERVICES	UNEXPENDED FUNDS	\$3,545.95
WY GUARDIANS AD LITEM PROGRAM	4/1/-6/30/09 GUARDIAN AD LITEM FEES	\$8,571.31
WY MACHINERY COMPANY	PARTS	\$1,675.97
WY STATE BAR	JOB PLACEMENT ADVERTISER-AUG09	\$117.00
WY STATIONERY	OFFICE SUPPLIES	\$2,103.00
WY STATE FIRE MARSHAL'S OFFICE	PLAN REVIEW FEES/POSTAGE	\$2,323.69
YOUNGBERG PLUMBING & HEATING	PLUMBING SERVICES	\$398.75
ZEE	MEDICAL SUPPLIES	\$325.40
ZOCO UNLIMITED, INC.	VEHICLE MAINTENANCE	\$30.00
GRAND TOTAL		\$165,100.24

## **CLERK**

### **Minutes**

Commissioner Paxton moved to approve the minutes of the August 18, 2009 regular meeting of the Board of Carbon County Commissioners (BOCC) and the August 24, 2009 workshop with the City of Rawlins as presented. Commissioner Young seconded and the motion carried unanimously.

### **Bonds**

Commissioner Young moved to approve a \$5,000.00 bond for Mary Smith, Assistant Treasurer for the Town of Sinclair. Commissioner Paxton seconded and the motion carried unanimously.

### **Monthly Receipts**

Commissioner Young moved to accept fees collected from the Clerk of District Court for the month ending July 2009 in the amount of \$2,261.88. Commissioner Paxton seconded and the motion carried unanimously.

## **Private Business Bonds**

Clerk Bartlett advised Mary Keating-Scott will be attending the September 15, 2009 BOCC meeting to explain the bond process that the BOCC could allow private businesses to use.

## **Wyoming Department of Transportation (WYDOT)**

Clerk Bartlett advised that WYDOT leases a lot from the County for commercial drivers license testing and they have requested permission to repair a pothole and blade the area. She noted this would be at no expense to the County. The BOCC approved the request.

## **Caterpillar Financial Lease-Purchase Agreement**

Clerk Bartlett presented a Resolution and Caterpillar Financial Lease-Purchase Agreement for one Caterpillar IT62H loader. She stated Attorney DeLancey asked her to forward the agreement to Barbara Bonds who is in the process of reviewing the agreement but has recommended the Resolution be executed today.

Commissioner Young moved to approve Resolution No. 2009-26, Lessee's Authorizing Resolution and authorize the Chairman to sign the Governmental Lease documents after Barbara Bonds review. Commissioner Paxton seconded and the motion carried unanimously.

### **Resolution 2009-26 ATTACHMENT B LESSEE'S AUTHORIZING RESOLUTION**

Whereas, **CARBON COUNTY, WY**, (the "Governmental Entity"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of **Wyoming** (the "State"), is authorized by the laws of the State to purchase, acquire and lease personal property for the benefit of the Governmental Entity and its inhabitants and to enter into contracts with respect thereto; and

Whereas, in order to acquire such equipment, the Governmental Entity proposes to enter into a lease-purchase transaction pursuant to that certain Governmental Equipment Lease-Purchase Agreement (the "Agreement") with Caterpillar Financial Services Corporation, the form of which has been presented to the governing body of the Governmental Entity at this meeting;

Now, Therefore, Be It And It Is Hereby Resolved:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement and all other schedules and exhibits attached thereto are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by counsel of the Governmental Entity or other members of the governing body of the Governmental Entity executing the same, the execution of such documents being conclusive evidence of such approval; and the persons holding the titles listed below or any other officer of the Governmental Entity who shall have the power to execute contracts on its behalf are hereby authorized and directed to execute, acknowledge, countersign and deliver the Agreement and all exhibits attached thereto, and the Secretary/Clerk of the Governmental Entity is hereby authorized to attest to the foregoing and affix the seal of the Governmental Entity to such documents.

Section 2. Other Action Authorized. The officers and employees of the Governmental Entity shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 3. No General Liability. Nothing contained in this Resolution, the Agreement, or any other instrument shall be construed with respect to the Governmental Entity as incurring a pecuniary liability or charge upon the general credit of the Governmental Entity or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Governmental Entity or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under this Agreement are special limited obligations of the Governmental Entity as provided in the Agreement.

Section 4. Authorized Signatories. Following are the true names, correct titles and specimen signatures of the incumbent officers referred in the foregoing resolution:

Name (Print or Type)	Title (Print or Type)	Signature
Terry Weickum	Chairman	-s- Terry Weickum
Jerry Paxton	Vice-Chairman	-s- Jerry Paxton
James E. Elliott, Jr.	County Commissioner	-s- Charles C. Young

Section 5. Effective Date. This Resolution shall be effective immediately upon its approval and adoption. This Resolution was adopted and approved on September 1, 2009.

Signature: -s- Gwynn G. Bartlett, Carbon County Clerk

Name Printed: Gwynn G. Bartlett

Date: September 1, 2009

**Land Exchange Proposal**

Clerk Bartlett advised the Board of Land Commissioners approved the Agreement to Initiate the Berger Cattle Company L.P & Jack Berger land exchange in Carbon County consisting of 960+/- acres of State Trust land for 880+/- acres of private land and reported the document is in her office for public review.

**Dixon Airport - Proposal and Agreement of Sale**

Clerk Bartlett presented a Proposal and Agreement of Sale for a Pilot’s Lounge / AWOS building for the Dixon Airport and stated the total price has been reduced as the steps will be done by the contractor, Scherer Construction. Clerk Bartlett noted there is no warranty on the building.

Commissioner Young moved to approve the Proposal and Agreement of Sale No. 168523 from ModSpace for one building, Unit 107995 to be used as a Pilot’s Lounge to be located at the Dixon Airport in the amount of \$17,325.00. Commissioner Paxton seconded and the motion carried unanimously.

**Kinetic Leasing**

Clerk Bartlett presented a proposal to lease/purchase a rescue truck, pumper, and a snow plow truck with Kinetic Leasing. She stated the estimated cost is \$496,950.00 plus interest.

Commission Young moved to authorize the Chairman to sign the Lease Financing Proposal from Kinetic Leasing for a rescue truck, pumper, and snow plow truck. Commissioner Paxton seconded and the motion carried unanimously.

**Archival Agreement**

Clerk Bartlett presented an agreement for digitizing and processing land records with ArcaSearch. She noted this was approved in her budget and Attorney DeLancey and Matt Webster, IT Director both have reviewed the agreement and recommend approval.

Commissioner Young moved to authorize Clerk Bartlett’s signature on the ArcaSearch Archival Agreement, Carbon County WY, Project #90024240.1.2, for digitizing and processing of book records collection, in the estimated amount of \$52,918.00 with a \$10,000.00 down payment and final payment due December 2009. Commissioner Paxton seconded and the motion carried unanimously.

**Public Health Grant Award**

Clerk Bartlett presented a Grant Award for the Public Health Emergency Preparedness Program to develop public health emergency preparedness and response capability in the County. She stated Attorney DeLancey and Bridget Hettgar from Public Health have both reviewed the contract and recommend approval.

Commissioner Young moved to approve the Grant Award Agreement for the U.S. Department of Health and Human Services Public Health Preparedness and Response for Bioterrorism Wyoming Department of Health and Carbon County Public Health Nursing Services for a term of October

1, 2009 through September 30, 2010 with total payment to Carbon County Public Health not to exceed \$67,617.00 Commissioner Paxton seconded and the motion carried unanimously.

### **Secure Rural Schools and Community Self-Determination Act of 2000**

Clerk Bartlett stated it was time to allocate Secure Rural Schools (SRS) funds for Title II and Title III projects. She stated that Carbon County must allocate a minimum of 15% but not more than 20% to Title III and/or Title II projects.

Commissioner Paxton moved to allocate Secure Rural Schools and Community Self-Determination Act of 2000 payments as follows: 13% to Title II projects and 7% to Title III projects. Commissioner Young seconded and the motion carried unanimously.

### **Community Service Agency Contracts**

Commissioner Paxton moved to authorize the Chairman's signature on the Contract for Services Agreement between Carbon County and the designated community services agencies that were allocated funding from the 2009-2010 County budget. Commissioner Young seconded and the motion carried unanimously.

### **AGENDA AMENDMENT**

Commissioner Paxton moved to amend the agenda to reflect an executive session at 3:05 p.m. this afternoon. Commissioner Young seconded and the motion carried unanimously.

### **ELECTED OFFICIALS / DEPARTMENT HEADS**

#### **Attorney**

Attorney DeLancey advised the next Legislative Task Force meeting will be on October 20, 2009 in Casper. She advised she spoke with Dudley Van Holt, Attorney for Three Forks, regarding liability insurance for maintenance at the Dixon Airport and it would be an additional \$9,500.00.

#### **Treasurer**

County Treasurer Cindy Baldwin advised that per the audit by the Department of Revenue, the County's sales tax revenue for September will be reduced by \$78,055.00. Treasurer Baldwin discussed her new financial management software and additional training her office is receiving. She reported some investments are due this month and she asked the Board's intent on whether or not she should retain more cash in case future funding requests are made. The BOCC asked her to make that funding available for a while rather than reinvest.

#### **Special Note**

The recording of the meeting stopped as the card was full. A new recording card was inserted later in the meeting when noticed.

#### **Emergency Management**

John Zeiger, Emergency Management Coordinator, discussed various training he plans on attending.

#### **Road & Bridge**

Bill Nation, Road & Bridge Superintendent, presented a Road & Bridge Report dated September 1, 2009. He reported he has assisted in unloading the new multipurpose building at the Fair Grounds, and discussed fencing at the Rawlins Airport. Mr. Nation reported they have spread recycled asphalt product at the County Fair Grounds, hauled asphalt to County Roads 205 and 500, hauled gravel to County Roads 209 and 504, hauled hot mix to County Road 504, hauled reject material to County Road 1, repaired asphalt on County Road 648, put up new signs on County Road 706, continue to blade county roads, and service equipment.

Mr. Nation stated he has been asked by DKRW when the new road might be built from the plant site to Interstate 80. Mr. Nation stated he understood that the road would be built after DKRW began construction. The BOCC agreed that this road would only begin after DKRW begins construction.

Gary Steele and Jon Anderson discussed the West Sinclair Bypass Project. Mr. Anderson stated the price for the reimbursement agreement with Conoco Phillips was approximately \$80,000.00 however now they have discovered their pipeline was deeper than originally thought therefore Conoco Phillips wanted additional funds to cover the excavation totaling \$290,000.00. He further explained the cost overrun and that he is thoroughly investigating this. Mr. Anderson provided a projected final funding status report for the project.

Commissioner Paxton moved to ratify the Chairman's signature on the West Sinclair Bypass Work Change Directive to authorize work to be performed in the amount of \$290,615.85 assuming 15% overhead costs to be waived by Conoco Phillips noting work would be completed by August 31, 2009. Commissioner Young seconded and the motion carried unanimously.

### **Sheriff**

Sheriff Colson presented a Memorandum of Understanding (MOU) between the Carbon County Sheriff's Office and the Towns of Encampment and Riverside, Wyoming. He stated Attorney DeLancey has reviewed the MOU and recommends approval.

Commissioner Paxton moved to approve the Memorandum of Understanding between the Carbon County Sheriff's Office and the Towns of Encampment and Riverside, Wyoming outlining the responsibilities of the parties pertaining to law enforcement in the Encampment/Riverside area. Commissioner Young seconded and the motion carried unanimously.

### **Assessor**

County Assessor, Sheryl Snider, reported the State has approved her levy report as submitted. She stated that field appraisers are working on mountain properties currently. Assessor Snider presented two rebates for the Chairman's signature and she reported on veteran's exemptions statistics.

### **County Fire**

Larry Trapp opened three sealed bids for acquisition of a 1,250 gallon water tender for the Carbon County Fire Department, Encampment area. Bids received were as follows: Midwest Fire Equipment totaling \$214,486.00 for a 2010 chassis with a non-urea engine system; Max Fire Apparatus totaling \$234,418.00 plus a \$3,476.00 deduction for payment of the chassis on delivery therefore totaling \$230,942.00; U.S. Tanker Fire Apparatus bid \$213,782.00 for a 1,250 gallon per minute on a 2010 Freightliner M2-6 Chassis noting this is a non-urea chassis. Mr. Trapp stated he will review the bids and make a recommendation later in the meeting.

### **Planning & Development**

Steven Brown, County Planner, reported he has hired a Planner I who will be starting employment September 28th. Mr. Brown reported this person will be heavily involved with rural addressing. Mr. Brown discussed a permit tracking system he will be purchasing for the office.

### **MERITAIN HEALTH**

Mark Moreno of Meritain Health overviewed a summary of expenses related to the County's health insurance and discussed a renewal. Mr. Moreno agreed to send Clerk Bartlett a sample of the contract and she will forward it to Attorney DeLancey for review.

### **EXECUTIVE SESSION**

Commissioner Paxton moved to go into executive session at 11:35 a.m. with Clerk Bartlett, Mark Moreno, and Attorney DeLancey to discuss matters considered confidential by law. Commissioner Weickum seconded and the motion carried unanimously.

Commissioner Paxton moved to come out of executive session at 11:57 a.m. and that the minutes of the session be approved as written and sealed and declared that no action was taken during the session. Commissioner Young seconded and the motion carried unanimously.

### **FIRE DEPARTMENT**

Mr. Trapp recommended accepting the bid of \$214,486.00 from Midwest Fire as the low bid from U.S. Tanker did not meet eight certain specifications.

Commissioner Paxton moved to accept the bid from Midwest Fire in the amount of \$214,486.00 for a pumper / tanker to be stationed at the Carbon County Fire Department Encampment Division. Commissioner Young seconded and the motion carried unanimously.

### **RECESS**

Chairman Weickum recessed for lunch at 12:02 p.m. and reconvened at 1:30 p.m.

### **EMERGENCY MANAGEMENT**

Mr. Zeiger stated that he visited Sinclair today regarding a foul odor from the Sinclair Refinery. He stated that he believes a petition is circulating due to the strong odor and he will be meeting with other officials along with Chairman Weickum tomorrow.

### **PLANNING & ZONING**

#### **Public Hearing Case File No. 09-10**

Chairman Weickum opened a public hearing at 1:33 p.m. to hear Planning & Zoning Case File No. 09-10. Steven Brown, County Planner, presented the following Case File: **Case File No. 09-10 – William R. Lake and Dixie Lee Baldwin**: Request for a Zone Change from Ranching, Agriculture, Mining (RAM) to Forestry Production and Seasonal Recreation (FPSR-40) on approximately 40 acres. The density being one (1) single-family dwelling unit and associated structures allowed on approximately 40 acres. The FPSR Zone allows seasonal recreational and residential activities.

Chairman Weickum called for comments for or against this case. William R. Lake stated that he wants to construct a place where younger generations can go. There being no further comments, Chairman Weickum closed the public hearing at 1:35 p.m.

Commissioner Paxton moved to approve Planning & Zoning Case File No. 09-10 William R. Lake and Dixie Lee Baldwin's request for a Zone Change from Ranching, Agriculture, Mining (RAM) to Forestry Production and Seasonal Recreation (FPSR-40) on approximately 40 acres, subject to the conditions outlined by the Planning & Zoning Commission in the amended Exhibit A. Commissioner Young seconded and the motion carried unanimously.

Commissioner Young moved to approve Resolution No. 2009-27, A Resolution of the Board of County Commissioners of Carbon County, Wyoming adopting the recommendation of the Carbon County Planning Commission regarding Planning & Zoning Case File No. 09-10. Commissioner Paxton seconded and the motion carried unanimously.

#### **Resolution No. 2009 - 27**

A Resolution of the Board of County Commissioners of Carbon County, Wyoming adopting the recommendation of the Carbon County Planning and Zoning Commission

**WHEREAS**, pursuant to Wyo. Stat. Ann. §18-5-202(b) and (c), the Carbon County Planning and Zoning Commission held a public hearing on Monday, August 3, 2009, which said hearing was advertised by public notice at least thirty (30) days prior to said hearing; and

**WHEREAS**, at said public hearing, the Carbon County Planning and Zoning Commission provided the public the opportunity to comment and the Carbon County Planning and Zoning Commission considered any public comments which were made at said hearing; and

**WHEREAS**, at the conclusion of said public hearing, the Carbon County Planning and Zoning Commission voted to certify in writing its recommendation to the Carbon County

Commissioners to adopt this amendment to the Carbon County Zoning Resolution of 2003 as amended for Carbon County, Wyoming; and

**WHEREAS**, the Carbon County Commissioners, pursuant to Wyo. Stat. Ann. §18-5-202(c) and after receipt of said certified recommendation for approval of this amendment to the Carbon County Zoning Resolution of 2003, as amended and subsequent amendments advertised by public notice at least 14 days prior to a public hearing to take public input and comments which said hearing occurred on Tuesday, September 1, 2009; and

**WHEREAS**, at said public hearing, the Carbon County Commissioners provided the opportunity for the public to comment and for the Carbon County Commissioners to consider any comments which were made on the proposed amendments; and

**WHEREAS**, the Carbon County Commissioners in considering the said amendment have also reviewed and considered the Carbon County Land Use Plan of 1998 as amended; and

**WHEREAS**, the Carbon County Commissioners have determined that the proposed amendment is in conformity with the Carbon County Land Use Plan of 1998 as amended and otherwise promotes the health, safety and general welfare of the residents of Carbon County; and

**WHEREAS**, at a regularly scheduled meeting of the Carbon County Commissioners, by majority vote, the Carbon County Commissioners moved to approve the following amendment(s) to the Carbon County Zoning Resolution of 2003 as amended.

**(1) Case File #09-10 – William R. Lake and Dixie Lee Baldwin:** Request for a Zone Change from Ranching, Agriculture, Mining (RAM) to Forestry Production and Seasonal Recreation (FPSR) on approximately 40 acres. The FPSR Zone allows seasonal recreational and residential activities, on minimum lots of 5 acres. The subject property is located off U.S.F.S. Road #100 and approximately 10 miles to Turpin Reservoir.

**Legal Description:**

SW1/4 NE1/4, Section 21, T17N, R80W, 6<sup>th</sup> P.M., Carbon County, Wyoming.

Together with all buildings and improvements thereon situate and appurtenances thereunto belonging.

SUBJECT, HOWEVER, to all easements, reservations, restrictions, rights-of-way, and other matters of record or apparent upon the ground.

**Density:**

Pursuant to the recommendations of the Carbon County Planning and Zoning Commission: Density on the subject parcel shall not exceed one (1) single family dwelling unit and associated structures allowed on approximately 40 acres (FPSR).

**Access:**

Applicants shall have provided proof that they have obtained an access permit from the Forest Service prior to applying for any building permit for construction on the property.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CARBON COUNTY, WYOMING:**

1. That the Carbon County Board of Commissioners, hereby adopt these amendment(s) as certified to them in writing by the Carbon County Planning and Zoning Commission and the existing zone shall be changed from Ranching, Agriculture, Mining (RAM) to Forestry Production and Seasonal Recreation (FPSR) on approximately 40 acres.

**PRESENTED, READ, AND ADOPTED** at a regularly scheduled meeting of the Board of County Commissioners of Carbon County, Wyoming, this 1st day of September, 2009.

**BOARD OF COUNTY COMMISSIONERS OF CARBON COUNTY, WYOMING**

By: -s- Terry Weickum, Chairman  
-s- Jerry D. Paxton, Vice Chair  
-s- Charles C. Young, M.D.

Attest:

-s- Gwynn G. Bartlett, Carbon County Clerk

**Public Hearing Case File No. 09-12**

Chairman Weickum opened a public hearing at 1:39 p.m. to hear Planning & Zoning Case File No. 09-12. Mr. Brown presented the following Case File: **Case File No. 09-12 – Scott and Rhonda Herold:** Request for a Zone Change from Ranching, Agriculture, Mining (RAM) to Residential (RD-40,000) on approximately 3.198 acres. The density being one (1) single-family dwelling unit and associated structures allowed per 40,000 sq. ft. The RD-40,000 Zone allows residential activities.

Chairman Weickum called for comments for or against this case. There being no comments, Chairman Weickum closed the public hearing at 1:41 p.m.

Commissioner Paxton moved to approve Planning & Zoning Case File No. 09-12 Scott and Rhonda Herold's request for a Zone Change from Ranching, Agriculture, Mining (RAM) to Residential (RD-40,000) on approximately 3.198 acres, subject to the conditions outlined by the Planning & Zoning Commission in the amended Exhibit A. Commissioner Young seconded and the motion carried unanimously.

Commissioner Young moved to approve Resolution No. 2009-28, A Resolution of the Board of County Commissioners of Carbon County, Wyoming adopting the recommendation of the Carbon County Planning Commission regarding Planning & Zoning Case File No. 09-12. Commissioner Paxton seconded and the motion carried unanimously.

### **Resolution No. 2009 - 28**

A Resolution of the Board of County Commissioners of Carbon County, Wyoming adopting the recommendation of the Carbon County Planning and Zoning Commission

**WHEREAS**, pursuant to Wyo. Stat. Ann. §18-5-202(b) and (c), the Carbon County Planning and Zoning Commission held a public hearing on Monday, August 3, 2009, which said hearing was advertised by public notice at least thirty (30) days prior to said hearing; and

**WHEREAS**, at said public hearing, the Carbon County Planning and Zoning Commission provided the public the opportunity to comment and the Carbon County Planning and Zoning Commission considered any public comments which were made at said hearing; and

**WHEREAS**, at the conclusion of said public hearing, the Carbon County Planning and Zoning Commission voted to certify in writing its recommendation to the Carbon County Commissioners to adopt this amendment to the Carbon County Zoning Resolution of 2003 as amended for Carbon County, Wyoming; and

**WHEREAS**, the Carbon County Commissioners, pursuant to Wyo. Stat. Ann. §18-5-202(c) and after receipt of said certified recommendation for approval of this amendment to the Carbon County Zoning Resolution of 2003, as amended and subsequent amendments advertised by public notice at least 14 days prior to a public hearing to take public input and comments which said hearing occurred on Tuesday, September 1, 2009; and

**WHEREAS**, at said public hearing, the Carbon County Commissioners provided the opportunity for the public to comment and for the Carbon County Commissioners to consider any comments which were made on the proposed amendments; and

**WHEREAS**, the Carbon County Commissioners in considering the said amendment have also reviewed and considered the Carbon County Land Use Plan of 1998 as amended; and

**WHEREAS**, the Carbon County Commissioners have determined that the proposed amendment is in conformity with the Carbon County Land Use Plan of 1998 as amended and otherwise promotes the health, safety and general welfare of the residents of Carbon County; and

**WHEREAS**, at a regularly scheduled meeting of the Carbon County Commissioners, by majority vote, the Carbon County Commissioners moved to approve the following amendment(s) to the Carbon County Zoning Resolution of 2003 as amended.

**(1) Case File #09-12 – Scott and Rhonda Herold:** Request for a Zone Change from Ranching, Agriculture, Mining (RAM) to Residential (RD-40,000) on approximately 3.198 acres. The density being one (1) single family dwelling unit and associated structures allowed per 40,000 sq. ft. The RD-40,000 Zone allows residential activities. The subject property is adjacent to the Cottonwood Bluff Subdivision off Carbon County Road #603 (Four Mile Road) and Addie's Lane – near the Town of Baggs and is located within ½ mile of the corporate town limits of the Town of Baggs.

**Legal Descriptions:**

**Warranty Deed's Description:**

A parcel of land located in the N1/2 NW1/4, Section 8, T12N, R91W, 6<sup>th</sup> P.M., Carbon County, Wyoming, described as follows: Commencing at the point of section line between Sections 5 and 8, T12N, R91W of the 6<sup>th</sup> P.M., whence section corner of Sections 5, 6, 7 and 8 bears 1310 feet West, thence South 269 feet to corner number 2, thence East 536.3 feet to corner number 3, thence North 269 feet to corner 4, thence West 536.3 feet to corner Number 1, the place of beginning.

**Tax Assessment Notice's Description:**

3.198 acres located in NE1/4 NW1/4, Section 8, T12N, R91W = 3.198 acres (Book 734/Page 168).

**Density:**

Pursuant to the recommendations of the Carbon County Planning and Zoning Commission: Density on the subject parcel shall not exceed one (1) single family dwelling unit and associated structures allowed per 40,000 sq. ft. (RD-40,000).

**Access:**

Carbon County Road #603 (Four Mile Road) and Addie’s Lane provide access to the subject property. An approved Permit to Construct Access Driveway, from Carbon County Road #603, was issued by the Carbon County Road and Bridge Supervisor.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CARBON COUNTY, WYOMING:**

1. That the Carbon County Board of Commissioners, hereby adopt these amendment(s) as certified to them in writing by the Carbon County Planning and Zoning Commission and the existing zone shall be changed from Ranching, Agriculture, Mining (RAM) to Residential (RD-40,000) on approximately 3.198 acres.

**PRESENTED, READ, AND ADOPTED** at a regularly scheduled meeting of the Board of County Commissioners of Carbon County, Wyoming, this 1st day of September, 2009.

**BOARD OF COUNTY COMMISSIONERS OF CARBON COUNTY, WYOMING**

By: -s- Terry Weickum, Chairman  
-s- Jerry D. Paxton, Vice Chair  
-s- Charles C. Young, M.D.

Attest:

-s- Gwynn G. Bartlett, Carbon County Clerk

**SEXUALLY ORIENTED BUSINESSES**

Chairman Weickum opened a public hearing at 1:48 p.m. to listen to all interested parties and receive public comment concerning the temporary resolution entitled “Zoning Moratorium on the Establishment of Sexually Oriented Businesses”. Attorney DeLancey noted that the resolution was available for distribution and the notice of public hearing was advertised to provide the opportunity for the public to comment on the proposed resolution. She stated if the BOCC does adopt the resolution it will need to set another public hearing within thirty days to extend the resolution. Chairman Weickum noted there was nobody present in the audience today.

Chairman Weickum called for comments for or against this resolution. Steven Brown stated that he and the Planning Commission are in favor of the Resolution to establish rules to guide them. Chairman Weickum closed the public hearing at 1:50 p.m.

Commissioner Paxton moved to approve Resolution 2009-29, A Zoning Moratorium on the Establishment of Sexually Oriented Businesses. Chairman Weickum seconded. Commissioner Young asked what the purpose of the resolution is. Attorney DeLancey stated that the resolution is a temporary measure to limit and restrict where these types of businesses can be in place. This resolution does not prohibit these types of businesses, just monitors their locations. She stated the Planning & Zoning Commission would then propose permanent rules to the BOCC. The motion carried unanimously.

**Resolution No. 2009 - 29  
Zoning Moratorium on the Establishment of  
Sexually Oriented Businesses**

**Whereas**, the Carbon County Board of County Commissioners (Board) is empowered by Wyoming Statutes §18-5-201 through §18-5-207 to promote the public health, safety, morals and general welfare of Carbon County, and the Board of County Commissioners may regulate and restrict the location and use of buildings and structures and the use, condition of use or occupancy of lands for residence, recreation, agriculture, industry, commerce, public use and other purposes in the unincorporated areas of Carbon County; and,

**Whereas**, the Carbon County Zoning Resolution does not contain sexually oriented business regulations in the unincorporated boundaries of Carbon County; and,

**Whereas**, based on studies and summaries of studies conducted in other communities, including but not limited to, Phoenix, Arizona; Brighton, Colorado; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Austin, Texas; Los Angeles, California; Garden

Grove, California; Beaumont, Texas; New York, New York; Bradenton, Florida; Newport News, Virginia; Dallas, Texas; City of South Salt Lake, Utah; and St. Mary's, Georgia; and Compilation Studies completed by the Attorney General's Working Group on the Regulations of Sexually Oriented Businesses (June 6, 1989, State of Minnesota) and the American Center for Law and Justice, the County Commissioners of Carbon County recognize the significant planning, zoning, property and secondary effect issues surrounding or arising from the location and operation of sexually oriented businesses; and,

**Whereas**, Carbon County is in the process of reviewing a number of federal and state court decisions, including but not limited to, *City of Renton v. Playtime Theatre, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 426 U.S. 50 (1976); and *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991) relating to this issue for guidance in writing regulations that will regulate sexually oriented adult entertainment in a constitutionally acceptable manner; and,

**Whereas**, Carbon County is in the process of reviewing the Sexually Oriented Business regulations of a number of other cities and counties in the State of Wyoming, including the cities of Rawlins and Evanston and the counties of Sweetwater, Albany and Laramie to evaluate the manner in which they regulate sexually oriented businesses; and,

**Whereas**, Carbon County intends its regulations pertaining to the establishment and operation of sexually oriented businesses to be in accordance with and in compliance with those rights guaranteed by the Constitution of this state and of the United States; and,

**Whereas**, the Board recognizes that the establishment of sexually oriented businesses for which there has been no planning nor regulations could negatively impact the health, safety and general welfare of the citizens of Carbon County;

**Now therefore let it be resolved**, effective September 1, 2009, the Carbon County Board of County Commissioners hereby declares the following zoning regulations control the establishment of sexually oriented businesses during this Moratorium, with the following stipulations:

1. The effective area for the enforcement of this Moratorium shall be described as all those properties in the unincorporated areas of Carbon County, Wyoming.
2. The Moratorium will not affect sexually oriented businesses that have been legally established prior to the date of this resolution.
3. This Moratorium will be in force and effect for a period of nine months from the date of approval of this resolution or until the passage of sexually oriented business zoning regulations, whichever occurs first.

**Now therefore let it be resolved**, the receipt, processing or issuance of all Carbon County Development Permits for the establishment or operation of a sexually oriented businesses will be controlled by the following zoning regulations:

## **CHAPTER VII SEXUALLY ORIENTED BUSINESSES**

### **Section 7.1            PURPOSE**

It is the purpose of this section to regulate the location of sexually oriented businesses to promote the health, safety and general welfare of the citizens of Carbon County, and to establish reasonable and uniform regulations to prevent or limit the adverse secondary effects and deleterious location and concentration of sexually oriented businesses within Carbon County. Sexually oriented businesses are allowed in MH Zone "Heavy Industrial" with a "Conditional Use Permit" granted by the Planning Commission.

### **Section 7.2            INTENT**

The provisions of this resolution have neither the purpose nor effect of imposing a limitation or restriction of the content of any communication material, including sexually oriented materials. Similarly, it is not the intent or effect of this resolution to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution, or Article 1 and Article 20 of the Wyoming Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is not the intent or effect of this resolution to condone or legitimize the distribution of obscene material as defined by Wyoming Statute §6-4-301(iii).

### **Section 7.3            FINDINGS**

Based on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), and *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), and on studies and summaries of studies conducted in other communities, including but not limited to, Phoenix, Arizona; Brighton, Colorado; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Austin, Texas; Los Angeles, California; Garden Grove, California; Beaumont, Texas; New York, New York; Bradenton, Florida; Newport News, Virginia; Dallas, Texas; City of South Salt Lake, Utah; and St. Mary's,

Georgia; and Compilation Studies completed by the Attorney General's Working Group on the Regulations of Sexually Oriented Businesses (June 6, 1989, State of Minnesota) and the American Center for Law and Justice, the County Commissioners of Carbon County find that,

- a. Carbon County has high community standards regarding sexually oriented business, particularly when nudity occurs as a form of sexually oriented business;
- b. the regulation of adult entertainment establishments and sexually oriented businesses is necessary to minimize the secondary effects of sexually oriented businesses, including but not limited to, increased crime, decreased property valuations, the spread of infectious diseases and deterioration of neighborhoods; and
- c. the regulation of sexually oriented businesses will preserve, promote and protect the public health, safety and general welfare of the citizens of Carbon County.

#### **Section 7.4 DEFINITIONS**

Terms involving sexually oriented businesses which are not defined in this Resolution shall have the meanings set forth in the Carbon County Zoning Resolution.

#### **ADULT ARCADE**

Any place to which the public is permitted or invited wherein coin-operated, slug-operated or any form of consideration, electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players or other image-producing devices are maintained to show images to five or fewer persons per machine at one time, and where the images so displayed are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

#### **ADULT BOOKSTORE OR ADULT VIDEO STORE**

A commercial establishment which devotes a significant or substantial portion (10 percent or more of gross floor area) of its stock in trade or interior floor space to or devotes a significant or substantial portion of its advertising expenditures (10 percent or more of gross advertising expenditures) to the promotion of the sale, rental or viewing, for any form of consideration any one or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- b. Devices, instruments or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental or material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as the provisions of this definition are otherwise met.

#### **ADULT CABARET**

A nightclub, bar, restaurant or similar commercial establishment which regularly features:

- a. Persons who appear in a state of nudity or semi-nudity; or
- b. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- c. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

#### **ADULT MOTEL**

A hotel, motel or similar commercial establishment which:

- a. Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and
- b. Offers a sleeping room for rent for a period of time less than eight hours; or
- c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time less than eight hours.

#### **ADULT MOTION PICTURE THEATER**

A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions that are distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" are shown.

#### **ADULT NOVELTY STORE**

Any retail store which devotes a significant or substantial portion (10 percent or more of gross floor area) of its stock in trade or interior floor space to or devotes a significant or substantial portion of its advertising expenditures (10 percent or more of gross advertising expenditures) to the promotion of the sale of paraphernalia, devices or equipment distinguished or characterized by an emphasis on depicting or describing specific sexual conduct or used in connection with specified sexual conduct.

**ADULT THEATER**

A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

**COUNTY**

The unincorporated area of Carbon County, Wyoming.

**ENTERTAINMENT**

Any act or performance, such as a play, skit, reading, revue, pantomime, scene, song, dance, musical rendition or striptease, whether performed by employees, agents, contractors or customers. The term Entertainment shall also mean bartenders, waiters, waitresses or other employees exposing specified anatomical areas or engaging in “specified sexual activities” in the presence of customers.

**EMPLOYEE**

A person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent or otherwise and regardless of whether said person is paid a salary, wage or other compensation by the operator of said business. Employee does not exclude a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

**ESCORT**

A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY**

A person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

**ESTABLISHMENT**

Includes any of the following:

- a. The opening or commencement of any sexually oriented business as a new business;
- b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- c. The additions of any sexually oriented business to any existing sexually oriented business; or
- d. The relocation of any sexually oriented business.

**GROSS FLOOR AREA**

Any area within the structure that is used for the direct sale of merchandise to the public and storage areas for those items.

**SEXUALLY ORIENTED MASSAGE PARLOR**

Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, or any other treatment manipulation of the human body which occurs as part of or in connection with “specified sexual activities,” or where any person providing such treatment, manipulation or service related thereto, exposes their “specified anatomical areas.”

**MASSAGE**

Any manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping by hand or mechanical device.

**MEMBER OF THE PUBLIC**

Any customer, patron, club member or person, other than an employee as defined in this section, who is invited or admitted to a sexually oriented business.

**NONPOROUS MATERIAL**

Excludes wood, plywood, composition board or other porous material.

**NUDE MODEL STUDIO**

Any place where a person who appears semi-nude, in a state of nudity or who displays “specified anatomical areas” and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the State of Wyoming or a college, junior college or university supported entirely or partially by public

taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partially by public taxation; or in a structure:

- a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and,
- b. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
- c. Where no more than one nude or semi-nude model is on the premises at any one time.

#### **NUDITY OR STATE OF NUDITY**

The showing of a human bare buttock, anus, male genitals, female genitals, pubic area, vulva, anal cleft, cleavage or female breast (nipple); or a state of dress failing to opaquely cover a human buttock, anus, male genitals, female genitals or areola of the female breast.

#### **OWNER**

When applied to a building or land, shall include any part owner, joint owner, tenant in common or joint tenant by entirety of the whole or part of such building or land.

#### **OUTCALL SERVICES**

Escorts and businesses which provide, as any portion of their business, nude or semi-nude services outside of the premises in any place of private resort or private quarters by models, dancers or other similar employees.

#### **PATRON**

Any person who contracts with or employs any outcall services or the customer of any business with a conditionally permitted use pursuant to this resolution.

#### **CONSIDERATION**

Any compensation, commission fee, salary, tip, gratuity, hire, profit, reward or any other form of compensation.

#### **PERSON**

An individual, proprietorship, partnership, corporation, limited liability company, association, owner, firm, joint venture, organization, trust and company or other legal entity.

#### **PREMISES**

The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including but not limited to, the sexually oriented business, the grounds, private walkways and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the permittee as described in the application for a conditionally permitted use pursuant to Chapter V of the Carbon County Zoning Resolution.

#### **PUBLIC NUDITY**

The display of “specified anatomical areas” and/or “specified sexual activities” as defined herein. Specified sexual activities means:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse, sodomy; or
- c. Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

#### **PUBLIC PARK**

A park, public recreation area, playground, swimming pool, golf course or athletic field which is under the control, operation or management of the state, a state agency, the county or a municipality.

#### **RELIGIOUS INSTITUTION**

A building which is used primarily for religious worship and related religious activities.

#### **RESIDENTIAL**

Pertains to the use of land, whether situated within the city or not, for premises such as homes, town homes, mobile homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for no transient occupancy and which are designed primarily for living, sleeping, cooking and eating therein. A premise which is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes.

#### **RENT OR SUB-RENT**

Act of permitting a room to be occupied for any form of consideration.

#### **SCHOOL**

A public or private educational facility, including but not limited to, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities.

#### **SEMI-NUDE, SEMI-NUDITY, OR IN A SEMI-NUDE CONDITION**

A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

**SEMI-NUDE DANCING BARS**

Any business which offers its customers live entertainment involving semi-nudity or live entertainment which is distinguished by or characterized by an emphasis on the displaying of any portion of human buttocks, or the female breast with less than a fully opaque covering.

**SEXUAL CONDUCT**

Acts of:

- a. Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
- b. Any penetration of the vagina or anus, however slight, by an object; or
- c. Any contact between persons involving the sex organs of one person and the mouth or anus of another; or
- d. Masturbation, manual or instrumental, of oneself or of one person by another; or
- e. Touching of the sex organs or anus, whether clothed or unclothed, of oneself or by one person by another.

**SEXUAL ENCOUNTER CENTER**

A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- b. Activities between male and female persons and/or persons of the same sex when one or more of the persons in a state of nudity or semi-nudity.

**SEXUALLY ORIENTED BUSINESS**

Any business activity, club or other establishment or place open to some or all members of the public within which the exhibition, showing, rental or sale of materials distinguished or characterized by an emphasis on material depicting, describing or exhibiting “specified anatomical areas” or relating to “specified sexual activities” is permitted. “Sexually oriented business” shall include, but is not limited to: an adult arcade, adult bookstore, adult cabaret/nightclub, adult novelty store, adult video store, adult model studio, adult motel, adult motion picture theater, adult peep show, adult theater, escort agency, massage parlor, nude model studio or sexual encounter center. Each sexually oriented business is a separate business regardless of ownership and must meet separation requirements.

**SHALL**

Always mandatory and not merely directory.

**SPECIFIED ANATOMICAL AREAS**

Includes any of the following:

- a. The human male genitals in a discernible turgid state, even if completely and opaquely covered; or
- b. Less than completely and opaquely covered human genitals, pubic region or pubic hair, buttocks, anus or female breast below a point immediately above the top of the areola.

**SPECIFIED SEXUAL ACTIVITIES**

Includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy; or
- c. Excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

**VIDEO-VIEWING BOOTH OR ARCADE BOOTH**

Any booth, cubicle, stall or compartment that is designed, constructed or used to hold or separate patrons and is used for presenting motion pictures or viewing publications by any photographic, electronic, digital or other means of media (including but not limited to, film, video or magnetic tape, laser disc, CD-ROM, books, magazines or periodicals) for observation by patrons therein.

**Section 7.5 LOCATION OF SEXUALLY ORIENTED BUSINESSES**

No sexually oriented business shall be operated or located in any zoning district other than the MH Zone (Heavy Industrial) as defined in the Carbon County Zoning Resolution. Sexually oriented businesses shall be subject to the following additional restrictions:

- a. Sexually oriented businesses shall be conditionally permitted uses subject to the Planning Commission Approval pursuant to Chapter V of the Carbon County Zoning Resolution.

- b. No sexually oriented business shall be operated or located within a Highway and/or Scenic Overlay Area as designated by the Carbon County Land Use Plan.
- c. No sexually oriented business shall be operated or located within one thousand (1,000) feet of:
  - 1) Another sexually oriented business;
  - 2) Any religious institution;
  - 3) Any school, public or private, or a state licensed daycare center;
  - 4) Any public park or recreation area, public playground or public swimming pool;
  - 5) Any cemetery;
  - 6) The boundary of any residential zone district;
  - 7) A boys' club, girls' club or similar existing youth organization;
  - 8) Any library; or
  - 9) A dwelling unit.
- d. No more than one sexually oriented business shall be operated or maintained in the same building, structure or portion thereof.
- e. For the purposes of subsection (c.) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects from the property line of the lot or parcel containing the premises where a sexually oriented business is conducted, to the nearest property line of the lot or parcel of the premises of a use listed in subsection (c.). Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.
- f. For purposes of subsection (d.) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the property line of the lot or parcel in which each business is located. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.
- g. Sexually oriented businesses shall be located with direct access to a public (federal, state or county) road.

**Section 7.6 SIGNS**

All signs shall comply with the provisions of the Carbon County Zoning Resolution. Notwithstanding anything contrary contained in the Carbon County Zoning Resolution, the more restrictive requirements shall prevail.

a. Sign Surface Area:

The sign surface areas of a business wall sign for an adult entertainment business shall not exceed two (2) square feet aggregate area for each one (1) foot horizontal length of façade, but not to exceed an aggregate area of thirty six (36) square feet on any one façade, whichever is the lesser.

b. Sign Appearance and Content:

- 1) Each letter forming a word on a sign shall be of solid color, and each letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
- 2) Sign and sign structures may be illuminated provided, however, such illumination shall not be by way of exposed neon, exterior lighting (e.g., spot or floodlights) or any flashing or animated lights (either interior to the sign, on the exterior of the sign or as a border to the sign). No descriptive art or designs depicting any activity related to or inferring the nature of the business shall be allowed on any sign. Said signs shall contain alphanumeric copy only;
- 3) Signs and exterior decoration/design shall contain no photographs, silhouettes, drawings, titles, graphic or pictorial representations in any manner of "nudity or state of nudity," "semi-nudity or state of semi-nudity," "specified sexual activities" or "specified anatomical areas."

c. Type of Signs:

- 1) Only flat signs shall be permitted.
- 2) Painted wall advertising shall not be allowed.

d. Number of Signs:

Not more than one (1) business wall sign shall be permitted for a sexually oriented business. In addition to the one (1) permitted business wall sign, a sexually oriented business shall be permitted not more than one (1) pole or ground sign structure. All other sign structures shall be prohibited.

e. Signs Protecting Minors:

To protect minors from exposure to obscene material, any business providing adult entertainment or material shall have in place at each entrance to such business a sign, no greater than one (1) square foot in size, stating, "Persons under 18 years of age shall not be admitted".

Other than the signs specifically allowed or required by this Section, no sexually oriented business shall attach, construct, or allow to be attached or constructed, any temporary sign, banner, light or other device designed to draw attention to a business location. It shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct or maintain any sign other than as provide herein and in the Carbon County Zoning Resolution.

**Section 7.7                      OPERATION STANDARDS**

a. Public View:

- 1) All windows, doors and other apertures shall be architecturally screened or otherwise obscured to prevent the viewing of the interior of any material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."
- 2) No sexually oriented business shall be conducted in any manner that permits the observation of any material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" by display, decorations, sign, show window or other opening from any public view.
- 3) No advertisement displays or merchandise available for sale or rent that includes or depicts explicit "specified sexual activities" or "specified anatomical areas" shall be visible from any public right-of-way.
- 4) No exterior portion of a sexually oriented business shall have flashing lights, or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner.

b. Hours of Operations:

No sexually business, except for an adult motel, shall be open for business at any time between the hours of 2:00 a.m. and 6:00 a.m.

c. Restrooms:

Restrooms in any sexually oriented business shall not contain video viewing or reproduction equipment.

d. Illumination:

All sexually oriented businesses shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measure at the floor level. This level of illumination shall be maintained at all time that any patron is present in the sexually oriented business.

e. Public Indecency:

No employee or owner of any sexually oriented business shall knowingly, or with reasonable cause to know, permit or allow a patron to commit in the sexually oriented business an act of "public indecency" as set forth in Wyoming Statute § 6-4-201.

f. Adult Video Viewing Booths:

All sexually oriented businesses which contain one or more adult video viewing booths shall comply with the following standards:

- 1) The sexually oriented business shall be configured in such a manner that there is an unobstructed view from a manager's or employee's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The view required in this subsection must be by direct line of sight from the manager's or employee's station. If the premises has two or more manager's or employee's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's or employee's station.
- 2) At least one employee shall be on duty at all times a patron is present inside the sexually oriented business.
- 3) All video viewing booths shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and at all times, no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

- 4) No video viewing booth may be occupied by more than one person at any time.
- 5) No openings of any kind shall exist between video viewing booths.
- 6) The floor coverings in any video viewing booth must be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- 7) All wall surfaces and seating surfaces in viewing rooms or any room or area providing patron privacy are constructed of, or permanently covered by, nonporous, easily cleanable material.
- 8) Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, windows and other surfaces.

g. Loitering:

It shall be the duty of the operator of a sexually oriented business to:

- 1) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the sexually oriented business is located;
- 2) Post conspicuous signs stating that no loitering is permitted on such property;
- 3) Provide adequate lighting of the exterior of the premises to provide for visual inspection or video monitoring to prohibit loitering.

h. Public Nudity:

Public nudity is prohibited in the County of Carbon, including in any sexually oriented business.

i. Contact with the Public:

- 1) It shall be a misdemeanor for a person who knowingly or intentionally appears, entertains or performs in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least five feet from any patron or customer and on stage elevated at least two feet from the floor.
- 2) No member of the public shall be permitted at any time to enter into any of the nonpublic portions of a sexually oriented business, which shall include but are not limited to: the dressing rooms of the entertainers or other rooms provided for the benefit of employees and the kitchen and storage areas, except that persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the premises or equipment on the premises may be permitted into nonpublic areas to the extent required to perform their job duties.
- 3) It shall be a misdemeanor for a patron or customer to pay or give directly any gratuity to any employee, before, during or after an employee has performed or entertained. A patron who wishes to pay or give a gratuity to a performer shall place the gratuity in a container that is at all times located separately from the performer. It shall be a misdemeanor to operate a business knowing that the described violation occurs.
- 4) It shall be a misdemeanor for an employee, while semi-nude, to have physical contact with a customer or patron while on the premises. It shall be a misdemeanor for a customer to have physical contact with any employee while said employee is semi-nude in a sexually oriented business.

Subsection 1 of this section shall not apply to an employee of a sexually oriented business, who, while acting in the scope of their employment as a waiter, waitress, host, hostess or bartender comes within five feet of a patron.

j. Performances not prohibited:

This resolution shall not be construed to prohibit:

- 1) Plays, operas, musicals or other dramatic works that are not obscene;
- 2) Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or
- 3) Exhibitions, performances, expressions or dances that are not obscene.

These exemptions shall not apply to the sexual conduct defined in § 6-4-301(v) of the Wyoming Statutes.

Determination of Obscenity:

Whether or not activity is obscene shall be judged by consideration of the following factors:

- 1) Whether the average person, applying contemporary community standards, would find the activity taken as a whole appeals to a prurient interest in sex; and

- 2) Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in Section §6-4-301(a)(v) of Wyoming Statutes.
- 3) Whether the activity taken as a whole lacks serious literary, artistic, political or scientific value.

k. Adult Motels:

It may be inferred from evidence that a sleeping room in a hotel, motel or a similar commercial establishment that has been rented and vacated two (2) or more times in a period of time less than eight (8) hours that the establishment is an adult motel as that term is defined in this chapter.

A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented business permit, he rents or sub-rents a sleeping room to a person, and within eight (8) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

l. Outcall Services – Operation Requirements:

It is unlawful for any business or employee providing outcall services contracted for in Carbon County fail to comply with the following requirements:

- 1) All businesses permitted to provide outcall services shall provide to each patron a written contract in receipt of pecuniary compensation for services, three days prior to the date the services will occur.

m. Prohibited Conduct

Sexually oriented businesses shall not:

- 1) Provide or sell any alcoholic beverages on the premises of the sexually oriented business.
- 2) Permit a bed, sofa, mattress or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an adult theater such items may be on the stage as part of a performance.
- 3) Allow any door to any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors and restroom doors to be lockable from the inside;
- 4) Provide any room in which employee or employees and patron or patrons are alone together without a separation by a solid physical barrier at least three (3) feet high and eighteen (18) inches wide. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.

**Section 7.7                    INSPECTIONS**

a. Permit Inspections:

An owner or operator of an adult entertainment establishment shall permit a representative of the Sheriff’s Department, Planning and Zoning Department, County Health Department, Carbon County Fire Department and other County or State agency representative to inspect the premises of a sexually oriented business for insuring compliance with the law, at any time it is occupied or open for business.

b. Penalty:

A person who operates a sexually oriented business or his agent or employee commits an offense if he/she refuses to permit a lawful inspection of the premises by a representative of the County as outlined in paragraph (1) above, at any time it is occupied or open for business. See Wyoming Statute § 18-5-206 for penalty provisions.

c. Do Not Apply:

The provisions of these sections do not apply to areas of an adult motel which are currently being rented by customers for use as a permanent or temporary habitation.

**Section 7.8                    VALIDITY AND SEVERABILITY:**

If any article, section, paragraph, clause, phrase or provision of this Resolution of the location of any District boundary shown in the records of the Zoning Officer that forms a part hereof shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Resolution or records of the Zoning Officer as a whole or any part of provisions hereof other than the part so adjudged to be invalid or unconstitutional.

**Section 7.9                    INJUNCTION:**

A person who operates or causes to operate a sexually oriented business in violation of any section or part of this section of the Carbon County Zoning Resolution is subject to a suit for injunction, as well as prosecution for criminal violations. Such violations shall be punishable by a fine of not more than seven hundred fifty dollars (\$750.00) per offense.

Each day a sexually oriented business so operates is a separate offense or violation. See Wyoming Statutes §§ 18-5-205 and 206 for applicable penalty provisions.

**Section 7.9 MINORS:**

No person under the age of eighteen (18) shall be permitted:

- a. In any sexually oriented business;
- b. To purchase goods or services at a sexually oriented business; or
- c. To work at a sexually oriented business as an employee.

Dated this 1<sup>st</sup> day of September, 2009.

Carbon County Board of  
County Commissioners  
-s- Terry Wieckum, Chairman  
-s- Jerry Paxton, Vice-Chairman  
-s- Charles C. Young, M.D., Member

Attest:

Gwynn G. Bartlett, County Clerk

Commissioner Paxton moved to set a public hearing regarding Resolution 2009-29, A Zoning Moratorium on the Establishment of Sexually Oriented Businesses for September 15, 2009 at 1:30 p.m. Commissioner Young seconded and Clerk Bartlett clarified with Attorney DeLancey that would allow enough time for advertisement and Attorney DeLancey stated time is sufficient. The motion carried unanimously.

**RECESS**

Chairman Weickum called a recess at 2:01 p.m. and reconvened at 2:06 p.m.

**EXECUTIVE SESSION**

Commissioner Paxton moved to amend the agenda and to go into executive session at 2:05 p.m. with Clerk Bartlett and Attorney DeLancey for personnel and other matters considered confidential by law. Commissioner Young seconded and the motion carried unanimously.

Commissioner Paxton moved to come out of executive session at 2:17 p.m. and that the minutes of the session be approved as written and sealed and declared that no action was taken during the session. Commissioner Young seconded and the motion carried unanimously.

**E911**

IT Director, Matt Webster, requested authorization to begin moving forward with upgrades to the County's E911 equipment. Mr. Webster added that Homeland Security has mandated that dispatch centers have enhanced 911 systems. He recommended beginning with the network side involving updated lines. Mr. Webster provided an estimated cost from Qwest showing a one time fee of \$2,839.34 with monthly charges of \$2,039.43. Chairman Weickum asked if the equipment would be compatible with the City's equipment. Mr. Webster stated that he understands that it would be compatible. The BOCC stated that if Undersheriff Mike Morris agrees with Mr. Webster's thoughts they may go ahead with the project.

**SHIREMAN PRIVATE ROAD APPLICATION**

Chairman Weickum called Eric Nelson of Brown, Drew, and Massey, LLP then opened a public hearing at 2:37 p.m. and announced that the matter before the BOCC today is a Private Road Application filed by Charles S. Shireman and John Earl Shireman, Docket #2009-07, re-filed with the Carbon County Clerk on August 11, 2009. Chairman Weickum noted that this hearing was duly advertised in the Daily Times and the Saratoga Sun. He added that this hearing is to review this application in the time frames as outlined by Wyoming Statute which requires that the BOCC review the application within thirty (30) days of its receipt.

Commissioner Paxton moved to appoint Eric Nelson as the Hearing Examiner for Docket #2009-07. Commissioner Young seconded and the motion carried unanimously.

Chairman Weickum turned the meeting over to Mr. Nelson, Hearing Examiner.

Mr. Nelson stated that the purpose is to review the application and make a finding as to the sufficiency of the application pursuant to 24-9-101(a). He asked if anyone from Attorney DeLancey's office was present to report on the application. Attorney DeLancey stated it appears that the statutory requirements of 24-9-101(a) and (b) have been met at this time.

Commissioner Paxton moved to accept the private road application for Docket #2009-07. Commissioner Young seconded and Chairman Weickum called for discussion. Tom Thompson of MacPherson, Kelly & Thompson stated he is here on behalf of Matt and Sherry Weber. He recognized the purpose today is only to determine if the application for private road is a legally sufficient petition. He objected on those grounds on behalf of the Webers on the grounds that 24-9-101, one of the requirements of subsection (a) is to include a specific statement as to why the land has no legally enforceable access other than a waterway and whether the land is surrounded on all sides by land owned by another person or persons or a natural or manmade barrier making access unreasonably possible. Mr. Thompson discussed Paragraph 2 on Page 2 noting that this is not legally sufficient to carry a prima facie case that the petition meets the requirements of State Statute, therefore the Weber's position is that the petition is deficient. The applicant's attorney Greg Weisz from Pence and MacMillan appeared on behalf of the applicants and stated that his position as to the question of legally enforceable access is to be determined at the next hearing and the question of whether or not there is legally enforceable access is irrelevant at this time. He requested the BOCC adopt the recommendation of the County attorney and schedule a hearing within the timeframe provided by statute. Kurt Kelly of MacPherson, Kelly, and Thompson stated he is here on a limited appearance on behalf of Muddy Creek and indicated that Mr. Weisz on behalf of the petitioners is stuck with the facts and that 24-9-101 states they have to state certain things and that the petition is insufficient due to the facts Mr. Thompson previously stated, and he finds the petition be insufficient on its face. He echoed Mr. Thompson's position and requested the application be found insufficient. Mr. Weisz read parts of the mentioned statute which says the application is required to state whether or not the land has any legally enforceable access and have to indicate whether the land is surrounded on all sides by land owned by another person or persons and the applicants have said it is surrounded on all sides by land owned by a person or persons or the BLM and he stated they have met the requirement and he again requested the issue be dealt with at a later date. Chairman Weickum asked for Mr. Nelson's analysis of the discussion. Mr. Nelson advised that after listening to the arguments, he stated there is a minimum of a prima facie case in the application and he concurred with Ms. DeLancey in stating that it is a sufficient application for a private road. Commissioner Paxton stated it appears to him that the property is not landlocked and asked when the decision of whether or not the land is landlocked is decided. Mr. Nelson stated that the allegations as stated meet the prima facie requirements and the conclusion of whether or not the parcel is landlocked is rightfully determined at the next hearing, no sooner than sixty days from today's date. Mr. Nelson stated the relevant issue today is whether or not the petition meets the minimum requirements of 24-9-101, and he stated at this point, he believes it does. There being no further discussion, the motion carried unanimously.

Attorney DeLancey noted that there was a notice of application for private road filed with Carbon County on August 17, 2009 which also appears to be consistent with 24-9-101(b) and that the issue of 24-9-101(f) regarding the costs as to whether or not a bond would be required for the matter, and she asked that these issues be addressed. Mr. Nelson stated that statute gives the BOCC the authority to assess the applicant costs of acting on the application under subsection (f). Mr. Thompson stated that a bond at a previous hearing was set at \$10,000.00 and Attorney DeLancey stated that this was also her recommendation.

Commissioner Paxton moved to grant the Hearing Examiner, Eric Nelson, the authority to set a hearing date as provided in Wyoming Statute 24-09-101(e) and request the petitioners post a bond in the amount of \$10,000.00. Commissioner Young seconded and the motion carried unanimously.

Commissioner Paxton moved to authorize the Chairman to execute the Order to Appoint the Hearing Examiner for Docket #2009-07, Charles S. Shireman and John Earl Shiremen, Applicants, also reflecting the posting of a \$10,000.00 bond. Commissioner Young seconded and the motion carried unanimously.

Mr. Nelson stated that he would contact the parties and set a hearing date. He stated he would also set other pertinent deadlines. There being no further comments, Chairman Weickum closed the public hearing at 2:59 p.m.

## **COMMISSIONERS DISCUSSION**

Chairman Weickum stated that he recently met with the Hanna City Council to discuss fire protection in and around the Town of Hanna. The parties agreed that the County could store its equipment in the Town's building and the departments would be combined. The agreement later provided by the Town of Hanna did not reflect these terms. Commissioner Paxton stated he would like to see all possibilities exhausted and suggested the Clerk schedule a workshop with the Hanna Town Council.

Commissioner Paxton distributed some e-mail information about the forest and introduced Van Smith with the American Forest magazine. Mr. Smith discussed his magazine and what he does.

## **RECESS**

Chairman Weickum called a recess at 3:21 p.m. and reconvened at 3:30 p.m.

## **EXECUTIVE SESSION**

Commissioner Paxton moved to go into executive session at 3:30 p.m. with Clerk Bartlett, Sheryl Snider, and Marcia Bean for potential litigation and other matters considered confidential by law. Commissioner Young seconded and the motion carried unanimously.

Assessor Snider left the executive session at 4:05 p.m.

Commissioner Paxton moved to come out of executive session at 4:17 p.m. and that the minutes of the session be approved as written and sealed and declared that no action was taken during the session. Commissioner Young seconded and the motion carried unanimously.

## **ADJOURNMENT**

There being no further business, Chairman Weickum adjourned the meeting at 4:18 p.m.

-s\_ Gwynn G. Bartlett, Carbon County Clerk

Approved this 15<sup>th</sup> day of September 2009

BOARD OF COUNTY COMMISSIONERS  
CARBON COUNTY, WYOMING

-s Terry Weickum, Chairman