

STATE OF CALIFORNIA, COUNTY OF SIERRA

BOARD OF SUPERVISORS

*** MINUTES ***

REGULAR MEETING

The Sierra County Board of Supervisors met in regular session commencing at 9:00 a.m. on June 1, 2010 in the Board of Supervisors' Chambers, Courthouse, Downieville, CA.

This meeting is recorded. To listen to the discussion for a particular item please visit the Board of Supervisors' webpage at www.sierracounty.ws or by requesting an audio CD from the Clerk to the Board. The audio is now available on the webpage by either reviewing the minutes and/or clicking on the audio page.

PLEDGE OF ALLEGIANCE: Led by Supervisor Goicoechea

ROLL CALL

Present: Lee Adams, Supervisor, District #1
Peter W. Huebner, Supervisor, District #2
Dave Goicoechea, Chair, Supervisor, District #4
Pat Whitley, Supervisor, District #5
Bill Nunes, District #3

Staff: Heather Foster, County Clerk-Recorder
Jim Curtis, County Counsel
Van Maddox, Auditor
Tim Beals, Director of Planning and Transportation
Carol Roberts, Director of Health and Human Services
Laura Marshall, Assessor/Solid Waste Fee Administrator

APPROVAL OF CONSENT AGENDA

At the request of Supervisor Huebner, Consent Item L was moved to the Regular Agenda as Item L-15.

L. Resolution authorizing the Auditor to make changes to the 2009/2010 County Budget for the Jail Budget. (AUDITOR/SHERIFF)

The Board moved to approve the Consent Agenda as amended.

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APPROVED as amended. Motion: Huebner/Adams/Unanimous Roll Call Vote: 5/0

CONSENT AGENDA

- A. Professional Services Agreement with James MacIntyre, Engineer for Plan Check Services. (BUILDING)

APPROVED, Agreement 2010-066

- B. Amendment to Agreement 2010-021 with MGE Engineering relative to the development of Plan of Action for Scour Critical Bridges, to extend the termination of the agreement due to high water. (PUBLIC WORKS)

APPROVED, Agreement 2010-067

- C. Amendment to Agreement 2009-078 with Avalex Inc. to extend monitoring and reporting services at the Alleghany Maintenance Facility Leaking Underground Fuel Tank Site through Fiscal Year 2011. (PUBLIC WORKS)

APPROVED, Agreement 2010-068

- D. Amendment to Agreements 2009-039 and 2010-010 with the Town of Truckee for Kenneling Services to reduce the fees charged to the County. (SHERIFF-CORONOR)

APPROVED, Agreement 2010-069

ADOPTED, Resolution 2010-101

- E. Authorization for Sierra County Health Department to reject bids that were received for the Sierra County Human Services/City of Loyalton Backup Generator Project and to re-solicit bids. (HEALTH)
- F. Resolution authorizing the Auditor to un-encumber funds originally encumbered to cover the cost of a project proposed by the Emergency Preparedness Office. (HUMAN SERVICES)

ADOPTED, Resolution 2010-102

- G. Authorization for the Auditor to pay Purchase orders 10678, 10679, 10682, 10683, 10684, 10685, 10686, 10687 and 10691, claims for reimbursement. (HUMAN SERVICES)
- H. Resolution authorizing the Auditor to make adjustments to the 2009/2010 County Budget for the Vertical Prosecution Grant. (AUDITOR)

ADOPTED, Resolution 2010-103

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- I. Minutes of the Board of Supervisors' meeting held April 20, 2010. (CLERK-RECORDER)
- J. Minutes of the Board of Supervisors' meeting held May 4, 2010. (CLERK-RECORDER)
- K. Resolution authorizing the Sheriff to re-apply for the U.S. Department of Justice COPS CHRP (Cops Hiring and Retention Program) personnel costs grant. (SHERIFF)

ADOPTED, Resolution 2010-104

APPROVAL OF REGULAR AGENDA

The Board moved to approve the Regular Agenda.

APPROVED. Motion: Whitley/Huebner/Unanimous Roll Call Vote: 5/0

9:05 A.M. – PUBLIC COMMENT OPPORTUNITY

At 9:05 a.m. Chairman Goicoechea opened and closed the public comment opportunity with no persons addressing the Board.

COMMITTEE REPORTS & ANNOUNCEMENTS –

Supervisor Huebner reported that he attended a meeting at the Loyalton cogeneration plant noting that he would encourage everyone to go to the facility as it is a good learning experience.

Supervisor Adams reported that tomorrow and Thursday is the CSAC Legislative Conference.

Supervisor Whitley reported on the Community Action meeting.

Supervisor Huebner also noted that there is a full page on Sierra City in the Sunset magazine.

DEPARTMENT MANAGERS' REPORTS & ANNOUNCEMENTS –

The Director of Human Services reported that a Health and Social Service Committee meeting is scheduled for June 18th at 2:00 p.m. in Loyalton. The agenda will be a preliminary discussion on health care reform and how it will affect Health and Human Services.

The Director also reported that there will be a Middle School meeting on June 22nd at 10:00 a.m. at the First Five office. They have also posted the annual update on the Mental Health Services Act on the website and because of the way the application is structured they wrote the teen center staffing into the budget in case the Middle School project went through.

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The Auditor reported that there is a Finance Committee meeting on the June 11, 2010.

Supervisor Nunes reported that he attended the Sustainable Forest Action Coalition meeting and they have adopted the action plan which is available online.

The Director of Planning reported on the Forest Service Ad Hoc Committee meeting noting that they went over a fairly long list of topics and the Forest Service has made a commitment to publish notices in the Mountain Messenger. The Committee also discussed communications between the two entities, the Ranger Station and possible opportunities of alternative uses. The Director continued to note that the discussion mainly focused on the Forest Service presence in the County. There was also discussion about the bike race, commercial rafting, mining properties and additional programs.

Chairman Goicoechea noted that he is still disappointed about the Forest Service on this issue. If they are just trying to patch up things with the Ad Hoc Committee this is not the objective and he would like the sense of the Board to carry this issue forward to RCRC.

Supervisor Adams also addressed his concerns of needing a Forest Service presence in western Sierra County, noting he is going to draft a letter to the Congressional Delegation in the event the County needs it.

The Director recommended adding this as a discussion/action item for the first meeting in July.

FOREST SERVICE UPDATE – Update by North Yuba District Ranger on items that may affect the County of Sierra.

Ms. Genice Froehlich, North Yuba District Ranger distributed a list to the Board on projects going on in the District. Ms. Froehlich continued to address the Ad Hoc Committee meeting noting that she made a commitment to have a more open dialog with the County. Ms. Froehlich further clarified that the only commitment the District made at the meeting was to keep the station open on a seasonal basis. Ms. Froehlich continued to explain that in an effort to improve their working relationship with the County on a day to day basis she has brought on a staff member who will be her point person and will make sure any legal notices are put in the Mountain Messenger. She is also going to make an effort to be at the Downieville Board of Supervisors' meetings and some of the Loyalton meetings. Ms. Froehlich continued to review the list of projects noting that the Forest Service does have a pretty big presence in the County.

Supervisor Adams welcomed Ms. Froehlich's input and realizes that she and Mr. Quinn are not responsible for some of the things that have happened in the past. Supervisor Adams further questioned with respect to the list of projects and with so many things going on in western Sierra County, why there isn't an office in here.

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PLANNING/BUILDING INSPECTION – Tim Beals

1. Resolution supporting Senate Bill 889 pertaining to Suction Dredge Permit Fee Refunds.

The Director of Planning explained that this is a bill to refund the dredging permit fees to those who received a permit in 2009 due to the ban on dredging. The bill has moved through the system and a resolution of support would be appropriate to send to Senator Aanestad and Senator Cox.

The Board moved to adopt the resolution supporting Senate Bill 889 pertaining to Suction Dredge Permit Fee Refunds.

Supervisor Adams expressed frustration as he sees this as the State slamming the door on this issue. If the legislature can work on this issue why aren't they working on funding the EIR to get this moving again. Supervisor Adams further questioned if doing this is better for the dredging community or would it be better not to do this and let the public sue on their own in order to keep this issue in the public eye.

The Director noted this would be an appropriate question for CSAC and RCRC. The Director further noted that if the message the Board wants to send is making the first priority to fund the EIR and second to refund the fees he can restructure the resolution. The Board could also take the position to oppose the bill as the Board isn't happy with the paralysis going on at the State level in dealing with this issue.

The maker withdrew the motion.

Supervisor Adams suggested adding language to amend the legislation to require funding the EIR.

Following further discussion on the matter, County Counsel recommended adding the following language to the proposed resolution:

“The Board while supporting the present legislation also strongly supports and encourages the State legislature to fully fund the development of an EIR that can be used to consider reinstating suction dredging mining. The Board also supports an elimination of the ban on suction dredging if the State is not going to fund the preparation of an EIR to address this issue.”

The Board moved to adopt the resolution supporting Senate Bill 889 pertaining to Suction Dredge Permit Fee Refunds as amended.

ADOPTED as amended, Resolution 2010-105. Motion: Nunes/Huebner/Unanimous Roll Call Vote: 5/0

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2. Discussion on the Taber Mine Reclamation process and direction to staff on formal request to the State Mining and Geology Board on project.

The Director of Planning explained this is a project that involves the Plumas National Forest, Sierra County and a private party that is operating on federal land. Under the surface mining laws when an operation is on federal land and it crosses the threshold of disturbance the Forest Service has the direct jurisdiction over the operation (meaning the use permit to authorize the plan of operations). Sierra County maintains lead agency status with respect to reclamation. In a case like this one, the County and the Forest Service work together and the County ultimately approves a financial assurance agreement, a reclamation plan and receives bonding for security in a form approved by the State. Mr. Morton is the owner of the Tabor Mine and has been a model steward of federal land; however, the issue at hand is that the County and the Forest service are in sync but the State is being ridiculous in their interpretation of the surface mining laws. This discussion occurred at the Planning Commission meeting when the reclamation plan was amended by the Commission. Mr. Morton has reclaimed the majority of the property and has not reclaimed a small portion because he intends to continue underground mining and doesn't want to trigger surface mining requirements. The equipment that the property is sitting on is required to be reclaimed under the Surface Mining Act. The Forest Service has agreed in the new permit to take on the responsibility to make sure that the limited area the equipment is sitting on will be reclaimed at the end of the operation thereby relieving the County of requiring Mr. Morton to reclaim the property. The State is requiring Mr. Morton to move the equipment, reclaim it and let it recede and come back in a few years and put the equipment back. The Director continued to explain that this proposal is to have the Board get behind an action to make a trip to Sacramento and testify before the State Board and show them how ridiculous the staff interpretation is of this case. He would hope that the Plumas National Forest and Mr. Norton would join them to make a credible claim before the State Mining and Geology Board.

Mr. Brandon Pangman, Planner addressed the Board noting that staff has held discussions with Assemblyman Logue and Senator Cox's representatives on this issue and from their standpoint this will take an amendment to the SMARA (Surface Mining and Reclamation Act) statutes to allow an exemption from SMARA for small surface disturbances.

The Board moved to authorize staff to testify before the State Mining and Geology Board that the Board of Supervisors supports the project.

APPROVED. Motion: Adams/Nunes/Unanimous Roll Call Vote: 5/0

PUBLIC WORKS AND TRANSPORTATION – Tim Beals

3. Discussion/direction on the 2009/2010 and 2010/2011 Emergency Management Performance Grant.

The Director of Public Works explained that the County has received \$80,000 for the 2009/2010 EMPG funds and will receive \$125,000 in 2010/2011 and he cannot find uses for all of the funds. He has submitted emails to the Sheriff and other entities and has not received a

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response. He is in a position now to not claim approximately \$30 to \$35,000 of the EMPG funds. There is an opportunity if the Board wants to pursue leveraging other emergency service organizations; however, the book keeping is on the County and from his standpoint it is easier to return the funding due to the potential of having audit exceptions. The Director continued to note that the County can brainstorm ideas for use of this funding at the next Finance Committee meeting.

Chairman Goicoechea noted that it makes sense not to chase money if it is not possible.

The Director noted that unless there is an objection from the Board he will move forward and only claim half this year and he will discuss with the Finance Committee on what to do for next year. He will notify the State that the County will be returning funds as well next year.

Supervisor Adams questioned if any of the fire departments have big ticket items. The Director noted they haven't been able to identify anything as their items need to be funded a 100% and not 50%.

4. Resolution approving amended expenditures under the 2009 Homeland Security Grant.

Following brief review the Board moved to adopt the resolution approving amended expenditures under the 2009 Homeland Security Grant.

ADOPTED, Resolution 2010-106. Motion: Adams/Huebner/Unanimous Roll Call Vote: 5/0

5. Resolution authorizing use of old Title III funds for an educational program through Sierra Plumas Joint Unified School District.

The Board moved to adopt the resolution authorizing use of old Title III funds for an educational program through Sierra Plumas Joint Unified School District.

ADOPTED, Resolution 2010-107. Motion: Nunes/Huebner/Unanimous Roll Call Vote: 5/0

10:00 A.M. – BOARD OF EQUALIZATION

16. Meeting of the Board of Directors of the Sierra County Board of Equalization.

At 10:00 a.m., Chairman Goicoechea recessed the Regular Board meeting and reconvened as the Board of Equalization.

At 10:05 a.m. Chairman Goicoechea adjourned as the Board of Equalization and reconvened as the County Board of Supervisors with all members present.

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COUNTY COUNSEL – James A. Curtis

6. Title III Funding Agreement with Sierra Plumas Joint Unified School District for after school forest related education programs.

The Board moved to approve the Title III Funding Agreement with Sierra Plumas Joint Unified School District for after school forest related education programs.

APPROVED, Agreement 2010-070. Motion: Nunes/Huebner/Unanimous Roll Call Vote: 5/0

7. Resolution authorizing transfer of contingency funds in the amount of \$20,000 for funding of Chamber of Commerce.

The Board moved to adopt the resolution authorizing transfer of contingency funds in the amount of \$20,000 for funding of Chamber of Commerce.

ADOPTED, Resolution 2010-108. Motion: Huebner/Nunes/Unanimous Roll Call Vote: 5/0

8. Amendment to Agreement 2009-101 for services with Sierra County Chamber of Commerce for promotion of County for Fiscal Years 2009/2010 and 2010/2011.

The Board moved to approve the amendment to Agreement 2009-101 for services with Sierra County Chamber of Commerce for promotion of County for Fiscal Years 2009/2010 and 2010/2011.

APPROVED, Agreement 2010-071. Motion: Nunes/Huebner/Unanimous Roll Call Vote: 5/0

9. Renewal of contract for Public Defender Services with J. Lon Cooper.

County Counsel addressed the matter noting that he spoke with Judge Pangman last week to see if they had input on the Public Defender services. Judge Pangman indicated that the Public Defender services have been satisfactory with the courts.

Supervisor Whitley moved to renew the contract for Public Defender Services with J. Lon Cooper.

Chairman Goicoechea questioned what was meant by satisfactory. County Counsel noted that he believes the services were satisfactory with the courts and they see no reason to renew the contract, but he could request Judge Pangman to come before the Board to discuss the matter further.

Supervisor Adams commented that he has had contact with a few individuals in the County who have concerns about the same person getting the contract without competition.

Mr. Don Russell, Downieville noted that he doesn't believe that a Judge is or should be a fair judge of a lawyer's abilities. He would suggest doing a survey of the people that have been

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served by the Public Defender. It has been mentioned that there are several contracts that the County routinely rolls over as the services are satisfactory. He believes that it would be pretty easy to survey to find out if the services are satisfactory.

Supervisor Whitley commented that the issues from a few years ago were resolved and things have been going okay.

The Auditor pointed out that the previous issues were concerns with good documentation and this has been satisfactory since that time and the Public Defender has not had a raise since he has been working here.

Mr. Larry DeVita, Sattley questioned if you got busted for something, is this the guy you would go to or would you sell the ranch to get another attorney? If you would sell the ranch then he would recommend not continuing the contract.

This item was continued to later in the meeting in order to here from Judge Pangman on the matter.

10:10 A.M. – COUNTY SERVICE AREAS BOARD OF DIRECTORS

17. Meeting of the Sierra County Service Areas Board of Directors.

At 10:16 a.m., Chairman Goicoechea recessed the Regular Board meeting and reconvened as the Board of Directors for County Service Areas.

At 10:20 a.m. Chairman Goicoechea adjourned as the Board of Directors for County Services Areas and reconvened as the County Board of Supervisors with all members present.

15. Agreement for temporary loan with Incorporated Senior Citizens of Sierra County for transportation services. (SUPERVISOR WHITLEY)

Supervisor Whitley explained that this is a loan for transportation services and if the Board wants to take this funding out of the County Service Area this item will need to come back to the Board at the next meeting. Supervisor Whitley further recommended taking this funding out of the General Fund as they need the funding now.

Supervisor Adams commented that it seems interesting to loan \$2,500, further suggesting the County pay for this and bring this item back in two weeks to reimburse the General Fund for the loan from the County Service Area.

Supervisor Whitley noted that these services cannot be paid out of the County Service Area.

County Counsel noted that transportation was not one of the enumerated services listed and he would be cautious in taking the latitude to say the County Service Area can pay for anything as there is a list of things that can be funded in the County Service Area structure.

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Following further discussion the Board moved to approve the agreement for temporary loan with Incorporated Senior Citizens of Sierra County for transportation services and directed County Counsel to review if transportation services can be paid for out of the County Service Area and bring this matter back to the Board at the next meeting.

APPROVED, Agreement 2010-073. Motion: Adams/Huebner/Unanimous Roll Call Vote: 5/0

10. Introduction and first reading of an ordinance amending Sections 8.05.010, 8.05.020 and 8.05.025 of the Sierra County Code, pertaining to Solid Waste Fees.

County Counsel addressed the Board explaining that during the last solid waste appeal hearing he had indicated that the ordinance the County was operating with was about ten years old. The ordinance was drafted early in the existence of Proposition 218 and there was not a lot of case law to assist them at that time. One of the issues the Board has been confronted with is if it is appropriate for the County to apply the fee against properties that have developed structures, but the property owner is not using the structure. Proposition 218 allows the fee to be for either use of the service or the immediate availability. County Counsel further reviewed the case Paland v. Brooktrails Township Community Services District wherein the court of appeal determined that the immediate availability doesn't depend upon the users/property owners desire to use it at any given time. It depends upon if the public entity has made the service immediate available to the property owner and the property owner's decision not to use the service is a personal decision as opposed to affecting the cost of the value of the public agency providing the service to the property. He believes the reasoning in this case is fairly persuasive and so he is suggesting revisions to the ordinance to do away with the prior structure where the County had an appeal process available to property owners who had a developed structure but would assert that they were not using it and qualify for a no use category.

This item was continued to later in the meeting.

9. Renewal of contract for Public Defender Services with J. Lon Cooper.

The Honorable Judge Pangman addressed the Board explaining that in times past there were some issues with the Public Defender contract and all of the issues they identified at that time were resolved. From the courts perspective they don't have any issues and believe Mr. Copper does a good job. The job he does in court for his clients appears to be satisfactory with the court.

Supervisor Adams noted he believes there needs to be a grading system at some point, further questioning if someone is unhappy with the representation is there a method for them to request someone else.

Judge Pangman explained that if a criminal defendant has been appointed a Public Defender or Conflict Public Defender and is dissatisfied with the legal representation they can bring a Marsden motion and layout their concerns to the courts. If the concerns are well founded

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the court can remove the Public Defender and appoint a new lawyer. They have done this in the past and it doesn't happen often. This is an immediate remedy for this issue.

The Honorable Judge Kennelly addressed the Board noting that the Marsden motion is the way to go and believes this is a fair process. Most of the complaints received aren't usually about the quality of work.

Supervisor Adams addressed concerns about this contract going to one person for over a decade and whether the Board should open the contract up to the world and receive new bids.

Judge Pangman responded noting that many counties will request the courts to conduct a process for choosing a Public Defender and it is a very involved process. This is one of the reasons why the selection for professional contracts doesn't have bidding requirements. Judge Pangman further noted that he is aware of the legal costs for other counties and he would suggest that the overall amount of the contract and the safeguards put in place for reviewing the contract is very favorable to the County.

Supervisor Adams suggested that if the Board is going to approve the contract today to also refer this to the Board of Supervisors' Law Enforcement Standing Committee in order to fully vet this process for next year.

Supervisor Whitley restated the motion to approve the renewal of the contract for Public Defender Services with J. Lon Cooper.

APPROVED, Agreement 2010-072. Motion: Whitley/Huebner/Unanimous Roll Call Vote: 5/0

Item 10 Continued

Mr. Wayne DeLisle, Pike addressed the Board expressing concerns with the one size fits all classification being overly broad as it unconstitutionality supersedes Article IIIIV D of the California Constitution proportionality requirements. Mr. DeLisle further reviewed Section 8.05.040 of the County Code pertaining to gate fees noting that subsection (a)(1) holds the ideal remedy of the problem the Board is facing with the overly broad classification. Mr. DeLisle further reviewed the Paland case addressed earlier by County Counsel noting he is aware of one case wherein water meters were addressed by the court and the court concluded that because the meter was an expenditure by the County for equipment that would not be taken in and out when the property owner decided not to use it, that it's availability was okay under Proposition 13, not the water. The case is not saying as implied by County Counsel, that the whole water bill was subject to that clause.

Mr. DeLisle continued to note the subsection that County Counsel is referring to is addressing whether or not you can charge a fee, it does not address the amount of the fee.

County Counsel addressed Mr. DeLisle's long standing criticisms of the system having to do with the clause in Proposition 218 dealing with the fees being proportionate. The case law

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has in a number of cases recognized that service fees can be charged whether they are based upon the use of a water meter for example, or on the basis of a fixed monthly fee. The Paland case cited in the proposed ordinance looks at the question of what the term of immediate availability means for a local agency to charge property related service fees if a property owner chooses not to avail himself of the use. County Counsel further read a portion of the Paland case noting that he believes the courts have recognized that immediately available means that a public agency is providing the service and if a property owner chooses not to use it, the court held that this qualified as a legitimate property related service fee irrespective of the property owners decision not to utilize the service.

Mr. DeLisle noted County Counsel has mischaracterized his position that the fee has to be precisely proportionate to the use. What his position is, is that the fee per the California Constitution cannot exceed what is proportional; it can be less but not more.

The Board moved to waive the first reading of ordinance amending Sections 8.05.010, 8.05.020 and 8.05.025 of the Sierra County Code, pertaining to Solid Waste Fees.

APPROVED. Motion: Adams/Huebner/Unanimous Roll Call Vote: 5/0

11:00 A.M. – SOLID WASTE APPEAL HEARING - ARATA

18. Continued hearing regarding appeal of Solid Waste Assessment Fees filed by Mr. Joe Arata.

County Counsel noted the Board has elected to reopen the hearing to receive further testimony to make a decision on the appeal. After the Board hears from all parties he would recommend a motion of intent and direction to him to prepare the findings and written statement. At the prior hearing he had commented that the County is operating under an ordinance that is ten or eleven years old and the Board is proposing to amend the language to the ordinance to remove the right to rebut the presumption that exists in the ordinance that all developed property uses the system and the right to present evidence to the Board to determine an exemption of “no use”.

Mr. Joe Arata, Appellant addressed the Board noting that he is at a disadvantage because he didn't know what was going to be discussed today. In addition to this he doesn't believe he has anything different to say as he feels they are at a stale point. He feels he is being forced to pay this fee when the County documents state he should be exempt from the fee. He would entertain an offer to turn this property into a storage facility, but the County holds him hostage to meeting building code requirements if he wants to convert the property back to a living residence to sell the property. So, his only option is to discuss this one clause which seems to be a provision that if he meets the provision he shall be exempt. He has sought legal counsel to get some insight as to what his rights really are. Mr. Arata continued to note that he didn't come prepared today with any further discussion but he is trying to achieve the exemption currently in the County Code.

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Ms. Joan Wilkerson Arata, questioned how long the amended ordinance has been in effect.

It was stated that this is a proposed change and has not been adopted at this time.

Supervisor Adams questioned Mr. Arata about what happens to the waste that was created from maintaining the property over the years.

Mr. Arata responded noting that the contractor he worked with dealt with this waste and the disposal of the waste was paid for through the fee attached to the permit.

Supervisor Adams continued to question Mr. Arata's prior statements of fixing furniture on the property as a hobby.

Mr. Arata noted that he did speak to this but it is very minimal. He does collect and store furniture at the property. He has not done any refinishing for years and misspoke when he mentioned this.

Supervisor Adams continued to question Mr. Arata's statements of refinishing furniture and why did he say it if it wasn't true.

Mr. Arata noted he misspoke and he only collects furniture. He has not refinished any furniture in this building.

Supervisor Adams continued to note that refinishing furniture could generate waste and he cannot understand how the word refinishing is misspeaking for storing as it is a whole different subject matter.

Mr. Arata invited the Board to stop by and view the property, noting that this property has been nothing more than a storage facility.

In response to Mr. Arata's inquiry, County Counsel explained that the new ordinance will be decided upon at the next Board meeting and it is available online for review.

The Solid Waste Fee Administrator addressed the Board noting that Mr. Arata had stated "in the last five years he has been appealing plus the fifteen previous years not one pin head of waste had been generated from the property". The Fee Administrator noted that on May 28 1992 and March 22, 2000 building permits were issued to replace the foundation on the property and construct a carport. New construction creates solid waste and that waste would have been placed in the County waste stream. The Fee Administrator continued to note that Mr. Arata also spoke to no water supply or power consumption to the property further referring to other types of properties that don't have power, water or even an improvement on the property but are receiving a solid waste bill. With respect to the County ignoring evidence of the utility bills and letters from neighbors she doesn't feel this is the case, rather she believes it was the previous Fee Administrator's review of the property and seeing the property as single family improvement with a carport. Mr. Arata also spoke that none of the previous Solid Waste Fee Administrators,

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Supervisor Huebner, or the Director of Public Works had spoken honestly about what they observed at the property. The former Assessor/Solid Waste Fee Administrator, Mr. Donald Iversen had stated upon his visit to the property that it is capable of being occupied as a single family residence. The Fee Administrator continued to explain that this property qualifies for classification as a single family residence and has been improved with a foundation and overall appearance. In 1987 the property was 30% good and is now over 80% good so there has been constant maintenance of the property.

The following documents were entered into the record:

- Exhibit 10 – Building permit issued to Mr. Arata for property located at 18 Lake Street, Sierra City
- Exhibit 11 – Picture of carport located at 18 Lake Street, Sierra City
- Exhibit 12 – Picture of front of house located at 18 Lake Street, Sierra City
- Exhibit 13 – Picture of right side of house located at 18 Lake Street, Sierra City

In response to Supervisor Adams' inquiry, the Fee Administrator explained that in 1978 when the Proposition 13 files were reviewed the percentage good for this property was 39% and after the improvements it is now 85% good. The percent good is the amount of the depreciation the Assessor's office applies to a home and at 20% the Assessor's office would deem a property not livable. The Fee Administrator continued to elaborate on how the Assessor's office reviews property in order to determine the percent good.

The Director of Public Works addressed the Board questioning if the letters and emails that transpired between Mr. Arata, himself and Mr. Iversen are part of the record. The Director continued to explain that the fundamental issue with this document is to verify that this is a single family residence. Mr. Arata has the right and the option to file an application for a building permit to convert the property to storage occupancy and there are a number of documents in the record that provided this opportunity to Mr. Arata. Mr. Arata has declined to do this as once the property is converted to storage and he then wants to change it back he has to obtain a building permit to change the occupancy classification. If the building codes have changed then the owner has the obligation to bring the building up to code at that time. The Director continued to clarify for the record that the opportunity existed for Mr. Arata to convert the property to storage and the opportunity was declined.

It was clarified that the December 15, 2008 email the Director was referring to was entered into the record.

Supervisor Whitley noted for clarification that the County Code did state that if someone could prove they weren't using the property as a residence then they could be exempt from the fee. Supervisor Whitley continued to explain that Mr. Arata's stance has been that the property hasn't been used as a residential property as he has not had water or electricity at the property for years.

The Fee Administrator continued to address Mr. Arata's statement at the April 20, 2010 hearing of "I need to use it the way I use it, a real need" noting that the recent court case of

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Paland v. Brooktrails Township Community Services District, the Water District Board of Directors established a monthly rate based on Proposition 218 on two parcels with existing utility connections regardless of whether the owner was using the District's services. The Plaintiff periodically would disconnect his water service when away from his home or when he couldn't afford the services. As a result the Plaintiff didn't feel he was subject to the fees from his non use. The court in this case began to look at voter intent of Proposition 218 and the immediately availability use definition. The court concluded that "the immediate availability use provision logically focuses on the agencies conduct and not the property owners as long as the agency has provided the necessary service connection to the charged parcel and it is only the unilateral act of the property owner that causes the services not to be used, the service is immediately available and the service is a fee rather than an assessment". In this case the court found the appropriate procedures under Proposition 218 for changing the rate and being in proportion given due notice to those affected were followed in the case. The court found that water and sewer fees affected were user fees that can be increased to reflect capital improvements, changes in cost for providing the service and that the base rate is a proper and important component in the change in the fee. The County's solid waste benefit assessment fee is adopted under the same provision of Proposition 218 and the solid waste system is immediately available for Mr. Arata's use and there is no requirement in any Sierra County ordinance that a single family residence has to be hooked up to a water system or have a power connection to be assessed a solid waste benefit assessment fee. The Fee Administrator continued to note that she maintains the decision that the property has been correctly classified as a single family residence and under Sierra County Code 8.05.020 (b) it shall be presumed that all use of real property that is developed or improved in any manner or used for human occupation creates or generates refuse.

Mr. Larry DeVita, Sattley noted that Mr. Arata is benefiting from having this service and he recognizes this value as he doesn't want to convert the property to storage occupancy as it would take away the value of a single family home. Mr. DeVita continued to note that the County has one of the best solid waste systems available as it is extremely cheap and efficient and it is something that adds a benefit to the entire community.

Mr. DeLisle addressed the Board noting that the Board cannot consider this service as an increase in value as it would be a property tax. The Board has not made a connection to Mr. Arata's property; there is no service provided through a connection and the court didn't address the issue being discussed here. Mr. DeLisle continued to address the County having based their presumptions that this classification creates the customary volume and the California Constitution, Article VIII D, Section 6 (4)(b) states "in any legal action contesting the validity of a fee or charge the burden shall be on the agency to demonstrate compliance with this article". This means the County can't presume that property "A" will create as many yards as property "B" just because they are in the same classification.

Mr. Arata noted that the statements made by the Solid Waste Fee Administrator and the Director of Public Works is true, the property is classified as a single family residence. He had to do the foundation as the house was falling down. He has also cleaned the outside and inside of the property to make it look cosmetically better. The fact that he will be hit with a fairly large building permit violation is pretty real. Mr. Arata continued to explain that over the last forty

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years he has maintained two properties in the County and he has taken nothing from Sierra County but three months of pleasure.

Supervisor Adams continued to question what Mr. Arata does to maintain the building. Mr. Arata responded noting that he rakes the gravel and leaves, maintains the yard and does not dust or vacuum. The power is on but there is no power consumption.

Supervisor Adams continued to question why Mr. Arata would continue to pay for a meter if it is not going to be used. Mr. Arata noted he keeps the power on for emergency purposes only.

In response to Supervisor Adams' inquiry, Mr. Arata clarified that he built the carport to get the car off the road so the snowplow could get through; he hasn't changed a light bulb in the house; and there is no work bench or tools in the carport.

The Director requested the following documents be entered to the record:

- Exhibit 15 – Email dated December 15, 2008 from the Director to Mr. Arata
- Exhibit 16 – Email dated December 16, 2008 from the Building Department to Mr. Arata outlining the costs of the building permit
- Exhibit 17 – Email dated January 12, 2009 to Mr. Arata answering his questions on how to convert the property to storage use
- Exhibit 18 – Email dated April 27, 2009 to Mr. Arata answer his questions about how to remove the toilet, kitchen appliances and sink

In response to Supervisor Whitley's inquiry, the Director explained that he isn't sure what has changed in the building codes that would affect reconnecting the toilet, sink, a fire place and water to the property as they are pretty fundamental things. The Director continued to note that with respect to converting from storage to a single family occupancy, he doesn't envision a lot of changes with the four items that have been identified that Mr. Arata would have to disconnect to convert to storage.

The Board determined that the motion of intent adopted by the Board on April 20, 2010 stands. County Counsel noted that he will bring back the proposed resolution at the next meeting.

- 15-L. Resolution authorizing the Auditor to make changes to the 2009/2010 County Budget for the Jail Budget. (AUDITOR/SHERIFF)

Supervisor Huebner explained that he was contacted by the Sierra City Store owner, Mr. Larry Breed who submitted a \$1,500 bill to the County to pay for the food purchased for the jail and needs the money now to pay for his employees. Supervisor Huebner continued to explain that he loaned the \$1,500 to Mr. Breed so his employees could be paid.

The Board moved to adopt the resolution authorizing the Auditor to make changes to the 2009/2010 County Budget for the Jail Budget.

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ADOPTED, Resolution 2010-109. Motion: Nunes/Adams/Passed 4/0/1 (Supervisor Huebner ABSTAINED)

BOARD OF SUPERVISORS

11. Appointment to the Sierra County Business and Economic Development Committee. (CHAIR GOICOECHEA)

In response to Supervisor Huebner's inquiry, County Counsel explained that unless something is in the structure of the resolution creating the committee, there isn't anything that prevents people from outside the County from serving on the committee.

Ms. Kathleen Norris, Applicant addressed the Board noting that she works in Sierra County and resides very close to the County line. She is a member of the Loyaltan Rotary Club and runs the Alliance For Workforce Development office for Sierra County.

The Board moved to appoint Kathleen Norris to the Sierra County Business and Economic Development Committee.

APPROVED. Motion: Huebner/Nunes/Unanimous Roll Call Vote: 5/0

12. Appointment to the Pliocene Ridge Community Services District. (CHAIR GOICOECHEA)

The Board moved to appoint Lilla Szakacs to the Pliocene Ridge Community Services District.

APPROVED. Motion: Adams/Huebner/Unanimous Roll Call Vote: 5/0

13. Appointment to the Sierra County Children and Families Commission. (CHAIR GOICOECHEA)

The Board moved to appoint Mary Wright to the Sierra County Children and Families Commission.

APPROVED. Motion: Nunes/Huebner/Unanimous Roll Call Vote: 5/0

14. Discussion and approval of a budget for the County Fish and Wildlife Commission for the remainder of Fiscal Year 2009/2010; submittal of preliminary budget for Fiscal Year 2010/2011, and adoption of resolution approving expenditures for the operation of the Commission. (SUPERVISOR HUEBNER)

Supervisor Huebner noted that the County has an ordinance which allows the Fish and Wildlife Commission to vote on items up to \$2,500 in expenditures and sometimes these

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expenditures have been delayed or denied by the Auditor. The last invoice submitted in the amount of \$2,500 has not been paid so he has brought the invoice to the Board for approval.

The Auditor noted that the ordinance is clear that if the budget is adopted he is to treat it like a County Department and they are authorized up to \$7,500. He has always paid routine items he is used to seeing from this budget; however, if he received something different he would bring it before the Board for approval.

Brief discussion ensued pertaining to the law being clear that the County cannot make a gift of public funds to the public.

Following further discussion the Board moved to approve the budget for the County Fish and Wildlife Commission for the remainder of Fiscal Year 2009/2010; submittal of preliminary budget for Fiscal Year 2010/2011, and adopt the resolution approving expenditures for the operation of the Commission.

ADOPTED, Resolution 2010-110. Motion: Adams/Huebner/Unanimous Roll Call Vote: 5/0

County Counsel clarified that it wasn't an ordinance rather it was the resolution that reconstituted the Commission.

NOON RECESS

The Board took the noon recess from 12:06 p.m. to 1:15 p.m. and reconvened with all members present.

CLOSED SESSION

19. Closed Session pursuant to Government Code Section 54957 to continue discussion regarding personnel evaluations for (1) County Counsel; (2) Director of Health and Human Services and (3) Director of Department of Transportation. (SUPERVISOR ADAMS)
20. Closed Session pursuant to Government Code Section 54957.6 to discuss labor negotiations.

CLOSED SESSION STATEMENT

The Board met in closed session from 1:15 p.m. to 4:30 p.m. Chairman Goicoechea reported that with respect to labor negotiations the matter has been discussed and there is nothing further to report. With respect to the evaluation of the three appointed department heads, the evaluations have been conducted and will be ongoing.

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CORRESPONDENCE LOG*

***(Items to be discussed or acted upon by the Board shall be identified and placed under the regular agenda)**

- C-1 Letter from Steve Soeth, Chairman, Glen County Board of Supervisors, regarding re-allocation of Public Safety Interoperable Communications Grant Funds.

No Action

- C-2 Letters from Paul Tasini, Portfolio Manager, AT&T Corporate Real Estate, regarding lease renewal options.

No Action

- C-3 Letter from Tex Ritter, Director, Sierra Nevada Regional Department of Child Support Services, regarding the relocation of Child Support Services' Office.

No Action

RECESS TO CONTINUED REGULAR MEETING TO BE HELD ON JUNE 15, 2010.

At 4:31 p.m., with no further business, Chairman Goicoechea adjourned the meeting.

DAVE GOICOCHEA, CHAIRMAN
BOARD OF SUPERVISORS

ATTEST:

HEATHER FOSTER