

COMMISSION MEETING MINUTES

June 9, 2009

The Board of Davis County Commissioners met in room 236 of the Davis County Courthouse, Farmington, Utah on June 9, 2009 at 10:00 a.m. Members present were Chairman P. Bret Millburn, Commissioner Louenda H. Downs, Commissioner John Petroff Jr., Clerk/Auditor Steve S. Rawlings, Chief Deputy Civil Attorney Gerald E. Hess, and Deputy Clerk/Auditor Linda May.

Charlene Lamph, Davis County Risk Management Specialist, led the Pledge of Allegiance. All were invited to stand and join in.

CJC Golf
Tournament

Chairman Millburn announced the upcoming Friends of the Davis County Children's Justice Center annual golf tournament. It will be held on June 12, 2009 at Schneider's Bluff Golf Course.

June is Safety
Month

Charlene Lamph, Davis County Risk Management Specialist, stated that June is Safety Month. There is great concern regarding distracted drivers. Examples of distractions are multi-tasking, pets running in vehicles, and dashboard dining. There are brochures available in Personnel regarding plant poisoning prevention and a brochure for the Utah Poison Control Center. "Buckle Up for Love" is a program available for reporting observation of a child under the age of five not protected by a child safety seat or a child five or older not protected by a safety belt. The program is sponsored by the Utah Safety Council. A flyer with the information needed to file a report and the telephone number is also available. Personnel will be doing surprise seat belt checks and for those in compliance their names will be entered into a drawing for prizes.

Barbara Gardner, Division of Natural Resources, introduced Donnie Bennett, Acting Area Fire Management Officer, for five counties. He has 18 years of experience, 10 of which are with wildland fire. Sam Biers, Morgan/Davis Fire Warden, was also introduced. He is the daily point guy and has joint responsibility for Davis and Morgan County.

Wildland
Protection Plan
#2009-146

Chief Larry Gregory, Farmington City Fire, presented a request for approval of the Community Wildland Protection Plan (CWPP) #2009-146. The plan is partnerships and collaboration to facilitate the development and implementation of the plan. There is concern about the potential problem of control and resources available in the event of a fire on the hillside of Farmington particularly the vicinity of Steed Creek. Chief Gregory said, "Farmington area would be a bullet catcher." A down slope wind could cause an incident that could tax all reserves. Sam Biers who has been very instrumental in identifying and implementing solutions to the risks was asked by Chief Gregory to speak. Sam Biers stated that there have been meetings held at Farmington City and all citizens of the area have been invited to participate. The common thread being there is a risk. There is concern to mitigate the fuels and provide a ready source to resources. Power lines have been a problem for helicopters to dip out of the water source. Through walking the sites the entities affected have identified the solution of moving the power lines and providing the resource of access to the water. The county has assisted with identification of property owners. The fire break road has been improved. Chairman Millburn stated, "It is amazing how much effort goes into protecting citizens. We call 911 and everyone shows up. The average citizen does not know all the work that goes into the process." Sam Biers stated that Davis County is the first area to have a CWPP. Commissioner Downs made a motion to approve the plan presented. Commissioner Petroff seconded the motion with the comment that the more we do mitigation the better we will do and be successful. All voted aye. Document on file in the office of Davis County Clerk/Auditor.

Davis County
Library Board
Appointment

Commissioner Downs stated that she has recently completed interviews to fill a vacancy on the Davis County Library Board. A recommendation is being given to approve the appointment of Roger Woodward, West Point City, for a term from May 1 to April 30, 2013. Chris Sanford, Davis County Library Director, reviewed a bio of Roger. He has served on the Planning Commission in West Point for about a year and a half and is currently serving his 10th year on the West Point City Council. He works in the transportation industry currently as fleet manager for Jardine Petroleum in North Salt Lake. In his spare time he loves to spend time with family, travel, be involved in sports, judge rodeos, and read. Commissioner Downs made the motion to approve. Commissioner Petroff seconded the motion. All voted aye.

Bid Award for
Stark Brothers
Inc.

Kirk Schmalz, Davis County Public Works Director, presented the bid award for the 2600 South Storm Drain Sediment Basin project. The low bid from Stark Brothers Inc. has been reviewed and verified. The bid is awarded in the amount of \$77,131.00. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye.

Agreement
#2009-147
Intermountain
Harley
Davidson for
Motorcycles

Keith Major, Davis County Sheriff's Office, presented agreement #2009-147 with Intermountain Harley-Davidson. The county has bought one motorcycle and will be leasing one motorcycle. The motorcycle was valuable to get through the crowds at the air show. Four officers will be authorized and licensed to ride the motorcycles. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Lewis Garrett, Davis County Health Director presented the following agreements:

Agreement
#2009-148 UT
Dept of
Community &
Culture for
Funding of
Weatherization
Program and
Budget Change

Agreement #2009-148 with the Utah Department of Community and Culture. Through the Department of Energy American Recovery and Reinvestment Act (ARRA) stimulus money is being made available for the weatherization program. It is receivable of \$1,000,000 for 2009. It is anticipated additional revenue will be available in the future. Under weatherization guideline the funds will be used for those who qualify for insulation, new furnaces and windows under certain circumstances. There will be a tight rein on spending and tracking of costs. The additional revenue will require a budget change as follows:

Increase line item 11-3329-100, ARRA – DOE	\$1,000,000
Increase line item 11-4981-110, Personnel	\$ 42,500
Increase line item 11-4981-130, Benefits	\$ 32,500
Increase line item 11-4981-110, Personnel (OT)	\$ 60,000
Increase line item 11-4981-130, Benefits (OT)	\$ 45,000
Increase line item 11-4981-230, Travel	\$ 30,000
Increase line item 11-4981-253, Vehicle Service	\$ 15,000
Increase line item 11-4981-260, Building/Grounds	\$ 106,000
Increase line item 11-4981-270, Utilities	\$ 3,500
Increase line item 11-4981-280, Phones	\$ 3,500
Increase line item 11-4981-610, Miscellaneous	\$ 453,000
Increase line item 11-4981-620, Contingency	\$ 100,000
Increase line item 11-4981-643, Computer Equip	\$ 10,000
Increase line item 11-4981-690, Equipment	\$ 34,000
Increase line item 11-4981-740, Equipment	\$ 65,000

Commissioner Downs made a motion to approve the agreement and the budget change. Commissioner Petroff seconded the motion. All voted aye. The documents are on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-149 UT
Dept of Health
Funding for
Programs

Agreement #2009-149 with the Utah Department of Health. It is the funding for Cluster programs for the MCH Block Grant, Prenatal to Five Home Visitation, and immunization programs. It is a receivable of \$121,197.00. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-150
Molina
Healthcare of
UT for Billing

Agreement #2009-150 with Molina Healthcare of Utah, Inc. It for the provisions to allow the Health Department to bill Molina plan members for reimbursable amounts for health care services. Commissioner Downs made a motion to approve the agreement. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-151
Freeport Center
Associates LLP
to Lease Space
to
Weatherization
Program

Agreement #2009-151 with Freeport Center Associates LLP. It is for rental of approximately 22,000 square feet of floor space in Building #A-16 for the Weatherization Program. The previous agreement #2009-62 will be voided. The new location at Freeport provides more space, easier access, ramps, rails etc. It is a payable of \$51,480.00 for one year. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Curtis Koch, Davis County Events Center Assistant Director, presented the following agreements:

Agreement
#2009-152
SportsPlex for
Fair
Sponsorship

Agreement #2009-152 with SportsPlex. It is a sponsorship agreement for the 2009 Davis County Fair. Components include title sponsorship of the Kid's Fitness Zone, banner placement at the Fair, and give-a-ways at ticketed events of the Fair. It is a receivable of \$2,500.00. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-153
Intrepid Motor
Sports to
Produce
Demolition
Derby

Agreement #2009-153 with Intrepid Motor Sports. The company will provide production of the Demolition Derby at the Davis County Fair. The event will be a one night event on August 12, 2009. The derby is the largest single event at the fair attracting a sellout crowd. It is a payable for a base fee of \$3,300. The agreement also commits the County to pay \$7,350.00 as prize money to the drivers. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-154
Zero Fatalities
for Sponsorship
of Demolition
Derby

Agreement #2009-154 with Zero Fatalities. It is a sponsorship agreement for the Demolition Derby. Components include naming rights of the demolition derby to the "Don't Drive Stupid Demolition Derby", banner placement, promotional distribution, and print advertising. It is a receivable of \$2,500.00. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-155
Dodge Rodeo
for Sponsorship
of PRCA
Rodeo

Agreement #2009-155 with Dodge Rodeo. It is sponsorship to be the exclusive sponsor of the PRCA Rodeo. Larry H. Miller Bountiful will be the local dealer that is participating with Dodge Rodeo and will provide the vehicles and banners for the event. It is a receivable of \$3,500.00. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor. Commissioner Petroff expressed thanks again to Layton Hills Dodge their sponsorship the last several years.

Agreement
#2009-156
Barn Yard
Buddies for
Pony Rides

Agreement #2009-156 with Barn Yard Buddies. It is for the free pony rides at the Fair. It is a payable of \$3,000.00. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Curtis expressed appreciation for the hard work of others. Meagan Hatch, who was recently hired, is coordinating the entertainment. There will be interactive game competition, entertainer Charlie Jenkins, as well as a new event "Davis Has Got Talent." Meagan has established Twitter and FaceBook sites for the Fair.

Agreement
#2009-157
Davis
Conference
Center Rental
for May Tax
Sale

Steve Rawlings, Davis County Clerk/Auditor, presented agreement #2009-157 with the Davis Conference Center. It is the room rental reservation for the 2010 May Tax Delinquent Sale on May 19, 2010. It is a payable of \$350 and a 20% service charge. Commissioner Downs made a motion to approve the agreement and the budget change. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Chairman Bret Millburn presented the following agreement and amendment:

Agreement
#2009-158 UT
Dept of Human
Services for
Funding to
Davis
Behavioral
Health

Agreement #2009-158 with the Utah Department of Human Services. It is the pass thru funding for Davis Behavioral Health Services for providing services related to substance abuse. The contract period is July 1, 2009 – June 30, 2012 with the amount being determined annually by the state of Utah. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Amendment
#2007-342B
UT Dept of
Human
Services for
Funding to
Davis
Behavioral
Health

Amendment #2007-342B with the Utah Department of Human Services. It is to extend the ending date to June 30, 2010 and increase the funding receivable by \$8,747.24 for the Family Resource Facilitator Program. The funds are pass thru to Davis Behavioral Health to provide the services. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Budget Change
for Sheriff's
Office

Steve Rawlings, Davis County Clerk/Auditor, presented a budget change for the Davis County Sheriff's Office. It is to increase line item 10-3870-000, Contributions – Private by \$1,000.00 and increase line item 10-4210-230, Travel by \$1,000.00. This increase is for the K-9 program. This will fund part of the training and supplies needed for the three dogs approved. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Discussion
Regarding Late
Payment of
Davis County
Transient Tax
for Two Hotel
Properties

Jerry Hess, Davis County Civil Attorney, stated the commission received a letter from Sterling Hospitality Management, LLC. They manage two hotel properties. The request is to waive penalty and interest on the delinquent payment of their Davis County Transient Tax. The County was informed of a serious problem with one of their office personnel who was negligent in her accounting duties for all properties assigned to her. Jerry advised the commission that the standard is not to waive interest but based on the circumstances and information provided by the management they could decide the percent of penalty to waive. Commissioner Downs stated that after having reviewed the specific information she would make a motion to not waive the interest and to adjust the penalty to 5%. Commissioner Petroff seconded the motion stating the company must still be held accountable. All voted aye. A letter will be sent with a revised statement of the amount owing as calculated by the office of the Davis County Treasurer.

Commissioner Downs made a motion to convene as the Board of Equalization. Commissioner Petroff seconded the motion. All voted aye.

Property Tax
Register
Approved

A property tax register as prepared by the Davis County Clerk/Auditor's Office was presented. Steve Rawlings, Davis County Clerk/Auditor stated under Auditor's Adjustments are two corrections. One is to abate taxes for a Circuit Breaker and the other is to abate taxes for a Veteran Abatement. Under Assessor's Adjustments are three greenbelt properties for abatement of taxes. There are 174 property tax appeals for approval and 87 appeals for denial. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Commissioner Downs made a motion to reconvene the regular commission meeting. Commissioner Petroff seconded the motion. All voted aye.

Commission Minutes Approved

Commissioner Petroff made a motion to approve the commission meeting minutes of June 2, 2009. Commissioner Downs seconded the motion. All voted aye.

Check Registers Approved

Check registers as prepared by the Davis County Clerk/Auditor were presented. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Documents on file in the office of the Davis County Clerk/Auditor.

Commission Comments:

Commissioner Downs said it was an inspiring and awesome experience to attend last week the National Security Seminar sponsored by the US Army War College in Pennsylvania. There was opportunity to discuss foreign policy and meet with people from around the world. We have real battles in the county. It provided a wealth of information for the County and she is still processing it all. She will share more at a later time.

Commissioner Petroff stated the Air Show this past week was great for the County. It was a chance to see the base in action. Thanks to the Davis County Sheriff's Office for their work with the base.

Commissioner Millburn echoed the comments on Air Force Week. Last Wednesday he was able to visit the testing and training range that is used by the Air Force. Multiple branches use the facility for training. It is much more than just a place to drop bombs.

No public comments.

Commissioner Downs made a motion to recess and convene as the Municipal Building Authority. Commissioner Petroff seconded the motion. All voted aye.

Resolution #2009-159 for Municipal Building Authority Board Appointments

Jerry Hess, Davis County Attorney's Office, stated that State Statute allows for the Municipal Building Authority. The Authority is for the purpose of acquiring, improving or extending one or more projects and financing the costs on behalf of the County. According to the by-laws of the Authority, the affairs of the Authority are managed by a Board of Trustees who are the Commissioners of Davis County. A resolution #2009-159 for appointment of Officers of the Municipal Building Authority for 2009 was presented with the Board of Trustees of the Authority as follows:

- | | |
|------------------------------|-------------------|
| President/Chairman | P. Bret Millburn |
| Vice President/Vice-Chairman | John Petroff Jr. |
| Trustee | Louenda H. Downs |
| Attorney | Gerald E. Hess |
| Secretary | Steve S. Rawlings |
| Treasurer | Mark Altom |

Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Resolution #2009-160 for Municipal Building Authority Lease Revenue Bonds

Jonathan Ward, Zions Bank Public Finance presented parameter resolution #2009-160. Whereas, the Authority desires to issue its Lease Revenue Bonds, Series 2009 (the "Bonds") in the aggregate principal amount of not to exceed \$9,000,000 to finance (1) the costs of the acquisition, construction, equipping and furnishing of a building for use by the County initially for the County Health Department (the "Project"); (2) fund any required deposit to a debt service reserve fund; and (3) pay costs associated with the issuance of the Bonds. The bonds to bear interest at a rate or rates of not to exceed 12% per annum, to mature in not more than 21 years from their dated date, and to be sold at a price not less than 98% of the total principal amount. The Authority shall hold a public hearing on June 30, 2009 to receive input from the public with respect to the issuance of the Bonds. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Commissioner Petroff made a motion to reconvene the regular commission meeting. Commissioner Downs seconded the motion. All voted aye.

Commissioner Downs made a motion to convene as the Board of Equalization. Commissioner Petroff seconded the motion. All voted aye.

As explained by Craig Bott, Davis County Attorney's Office, it has been determined that the commercial information for the hearing for Boyer Hill Military Housing LC will not be of a nature that discloses confidential information. Therefore, the discussion should be held in an open meeting rather than a closed meeting. The following individuals were introduced Robert Lochhead, Attorney; Mark Pace, Boyer Hill Military Housing President; and Rulon Gardner, Partner.

Mr. Lochhead did a power point presentation for the hearing. The basic premise: "This is an Air Force project to provide housing on Air Force land for Air Force families on terms totally controlled by the Air Force. The Air Force contracts with Boyer Hill Military Housing to obtain financing, design, construction, and property management service. The military housing on base was built in the 1960's. New military housing units and incidents of ownership for US Air Force v Boyer Hill Military Housing was listed and reviewed. Taxes and services for agencies in Davis County were reviewed. A Utah Supreme Court decision *Interwest Aviation v County Board of Equalization of Salt Lake County* (Utah 1987) was cited: The determination of whether improvements on government-owned land leased and used by a private part to conduct a for-profit business qualify for tax exemption depends upon whether the private party or the governmental unit has the most significant incidents of ownership and not necessarily upon who has formal legal title....." It is felt the Air Force has the great benefit from the new housing and it should be deemed tax exempt. The federal government owns the land and Boyer Hill will have a 50 year lease on the housing. Record title will be in the name of Boyer and reverts back to the Air Force after 50 years. The excess revenue will be divided between Boyer and the Air Force. Commissioner Downs said that she had met with Mr. Pace some time ago and has struggled to find prototypes as comparables. Mr. Lochhead stated the three points to consider from the discussion are: (1) Should be tax exempt (2) Air Force to benefit, and (3) It is just fair. Mr. Pace stated that the process began in 2003 for proposals. In 2005 Boyer Hill was selected. It is a very complicated process and brought two boxes full of binder to give an idea of the paperwork involved. The federal government is constantly looking over the shoulder at Boyer. Boyer borrowed \$75,000,000. The basic premise is the Air Force did not want to put up the money and the project is being accomplished through financing by Boyer. Mr. Lochhead referenced Utah Code 59-2-1102 (1)(a), "The county board of equalization may ...determine whether certain property within the county is exempt from taxation." He stated the presentation shows Air Force has control, it is fair and equitable to consider the housing tax exempt, and it does not place a burden on others.

Craig Bott, Davis County Attorney's Office, did a power point presentation. The basic premise of the position in opposition to Boyer Hill's request for tax exemption is a matter of fairness and equity. This project should not impose a burden on the taxpayers of Davis County. Taxes pay for roads, police service, fire suppression, schools, and sanitation. The key to issue resolution is based on three points: (1) Is it legal (2) Is it practical; and (3) Is it moral. Property taxes are a creature of State law. Utah Code §59-2-103 states, "All tangible taxable property located within the State shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. It is well settled law that a State cannot tax the Federal Government or the property owned by the Federal Government, but is property taxation prohibited by Federal law for Military Privatized Family Housing? Ownership and legislative jurisdiction are the cornerstones of any tax exemption issue when dealing with federal properties. Boyer asserts that while "technically owner of the improvements" it lacks control over the project because the lease limits Boyer's use of the improvements. Boyer argues that because provision of the lease limit, direct and control certain construction, maintenance and operation issues that Boyer lacks ownership control of its

property to the extent it should be relieved of responsibility for property taxes. The majority of property owners in condominium complexes and PUD's could make the same argument. Control of cash flow and the Lockbox Agreement were discussed. A 50 year lease insures that Boyer will obtain all useful life of the improvements. Legislative jurisdiction of Federal military installations is divided into 4 broad categories: (1) Proprietary, (2) Partial, (3) Concurrent, and (4) Exclusive. The following reference was cited from U.C.A. 63L-1-204 Concurrent jurisdiction with United States—Taxation of Businesses on Federal lands (1) The state of Utah retains concurrent jurisdiction, both civil and criminal, with the United States over all lands affected by this act. (2) The state and all of its political subdivision also reserve the right to impose taxes on individuals, partnerships, corporations, association, and all other business entities doing business on the lands affected by this chapter in respect to such business or on any property of these entities situated on these lands. In conclusion the practical aspect of the law allows to tax and the moral aspect is using resources for the best benefit of society.

Commissioner Petroff stated that he dislikes conflict. Boyer is an outstanding developer. Questions have been raised and he feels he must go along with the County Attorney. The County is negligent if we do not tax. He made a motion to deny the tax exempt status.

Commissioner Downs stated that she cannot second. Boyer Hill is providing a support of military. She feels there is evidence the military has outsourced.

Commissioner Millburn stated that he appreciates both issues being expressed and he seconded the motion. He is not diminishing Boyer Hill but feels the evidence is clear.

Commissioner Petroff and Millburn voted in favor of the motion. Commissioner Downs opposed. Craig Bott, Davis County Attorney's Office, was asked to prepare the Finding of Facts and Rulings of Law.

Commissioners Downs made a motion to return to the regular commission meeting. Commissioner Petroff seconded the motion. All voted aye.

Meeting adjourned.