

**MINUTES FOR REGULAR COMMISSION MEETING HELD JULY 28, 2008
BEGINNING AT 1:00 P.M. IN THE COMMISSION BOARD ROOM IN DUCHESNE,
UTAH**

Present

Commission Chairman W. Rod Harrison, Commissioner Kent R. Peatross, Commissioner Kirk J. Wood, County Deputy Attorney Jonathan Stearmer, Public Works Director Glen Murphy, Property Owner Terri Penrod, Maxine Penrod, and Commission Assistant BobbiJo Bailey taking minutes of the meeting.

Opening Comments

Chairman Harrison gave the prayer. There were no other comments.

Pledge of Allegiance

Any wishing to participate.

Timesheets –

Deputy Clerk Auditor Leann Stewart joined the meeting at 1:25 P.M...

All were approved

Consideration Of Payment Vouchers

Clerk Auditor Diane Freston joined the meeting at 1:12 P.M...

The commission reviewed vouchers #106459 through #106460 dated July 09, 2008 in the amount of one thousand five hundred fifteen dollars and eighty six cents (\$1,515.86), vouchers #106461 through #106534 dated July 14, 2008 in the amount of two hundred forty two thousand four hundred seventy nine dollars and sixty three cents (\$242,479.63), vouchers #106593 through #106596 dated July 25, 2008 in the amount of seventy four dollars (\$74.00), and vouchers #106597 through #106683 dated July 28, 2008 in the amount of two hundred sixty three thousand six hundred sixty seven dollars and seventy five cents (\$263,667.75). *Commissioner Peatross motioned to approve the vouchers as presented. Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of Business License Application For Journeyacademy USA Inc.

Chief Deputy Clerk JoAnn Evans joined the meeting at 1:24 P.M...

Deputy Evans stated that this is an Internet business that will be teaching English to people in India. *Commissioner Wood motioned to approve the application as presented. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

Consideration of 2007 County Budget Audit Report – Aycock, Miles and Associates, C.P.A.'s

Miles and Associates Auditor Mike Miles joined the meeting at 1:33 P.M...

Auditor Miles presented findings of the Duchesne County Audit/Financial Statement and a comparison for years 2005, 2006, and 2007 (see attached). He reported that according to the balance sheet Duchesne County is in great shape. There were a couple of findings that are listed on page 51 (fifty-one) of financial statement, the first one is due to the financial improvement and condition of the county that has caused the general fund balance to exceed limits as established by the Utah Statute; and stated that the county will need to transfer two (two) or three (three) million out of the general fund to necessary capital projects. The second finding is that the Solid Waste department exceeded its budgeted expenditure amount, due to them picking up half of the loss from the landfill district that got reported in the audit; half of the loss was four hundred and fifty thousand dollars (\$450,000.00) that is due to closure costs that will not happen again next year. Miles stated that they tested a number of departments and found that the approval of expenditures process is going very good, department heads and commissioners are all approving. He also stated that according to the balance sheet the county is in great shape and there is a huge improvement on the county's financial condition.

Consideration Of Partial Payment Request No. 22 & 23, Duchesne River Bridge Rehab. Bridgeland Project No. BHO-LC13(4)

Horrocks Engineers Project Manager Rex Harrison joined the meeting via telephone at 1:29 P.M...

Project Manager Harrison stated that these are the final payment requests for this project, it shows that it is only eighty eight percent (88%) complete because we actually under run this approximately twenty percent (20%) due to hours that were not entered in; a total

of twenty five thousand dollars (\$25,000.00). *Commissioner Peatross motioned to approve payment No. 22 in the amount of two thousand four hundred forty six dollars and ninety-two cents (\$2,446.92) and payment No. 23 in the amount of five thousand one hundred eighty-nine dollars and thirty-one cents (\$5,189.31). Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of Partial Payment Request No. 25, Arcadia Road Reconstruction Project No. STP-1544(1)5

Commissioner Peatross motioned to approve payment request No. 25 in the amount of seven thousand six hundred nine dollars and eighty-one cents (\$7,609.81). Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.

Consideration Of Consideration Of Predator Control Contract For Fiscal Year 2009

Commissioner Peatross motioned to postpone the Predator Control Contract for consideration of a future meeting, and suggested Assistant Bailey contact Robert Ivie to attend a work meeting for discussion of the three thousand dollar (\$3,000.00) increase from last years contract. Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.

Consideration Of Resolution No. Resolution No. 08-17, A Resolution Approving The Condemnation Of Certain Real Property, Or Interest In Real Property, In Duchesne County For The Purpose Of Creating A Public Right-Of-Way

Attorney Stearmer stated that this is essentially an amendment on a previous resolution we passed based on a private road that needs to be condemned and made a public road. When we did a preliminary title report on this property we found that Zion's First National Bank holds interest and they were not provided proper notice. We want to make sure we do everything properly to show notice being sent out and a resolution being passed so that if we need to we can go onto the condemnation proceeding in court; this is based off of the events that have transpired on the Penrod property arbitration that took place saying that it was not a public road based off of the approval by the county for the Terra Del-Sol subdivision everyone thought it was a public road and it came back that it wasn't so that's where the public need is that it needs to be condemned. The arbitration was set up by the Ombudsman's office. He also stated that he received a letter from Mrs. Terri Penrod stating that Evan Schmutz is representing her and sent him a responding letter to give notice that this was being held, we have asked if they are being represented by council to have something in writing and I would like to try to have this resolved outside of condemnation proceeding. If this is a dollar amount issue I would like to get this resolved and not proceed to the court system. It is the county's position to avoid court proceedings. Mrs. Terri Penrod stated that if this is condemned that the value we were given is not acceptable and you will need to speak to my lawyer about negotiation. Attorney Stearmer stated that there has been a little frustration with dealing with Mr. Schmutz, he did express concern of the value but there has not been any other communication and my office is willing to have any discussion take place and I would be willing to go to his office in Provo to meet with him in person to get this worked out. We can discuss the appraisal and work out a number and come back to the commission for approval. Chairman Harrison stated that the county's position is and always has been to negotiate this outside of condemnation; if there is anyway to resolve this we would love to do that.

RESOLUTION NO. 08-17

A RESOLUTION APPROVING THE CONDEMNATION OF CERTAIN REAL PROPERTY, OR INTEREST IN REAL PROPERTY, IN DUCHESNE COUNTY FOR THE PURPOSE OF CREATING A PUBLIC RIGHT-OF-WAY

PARCEL NO. 00-0005-2518

OWNERS: Frank R. Penrod and Terri L. Penrod

INTEREST HOLDER: Zions First National Bank

WHEREAS, for the reason set forth below, the public interest and necessity require the acquisition by Duchesne of a public improvement, namely, a public right-of-way [the "Right-Of-Way"], for the purpose of allowing for the movement of traffic and public access for a previously approved subdivision (formally known as "Terra Del Sol"), which Right-Of-Way shall be owned by Duchesne County [the "County"] thereby increasing the usage, safety, access,

convenience and enjoyment of the reference area to the residents of the County and other members of the general public; and

WHEREAS, Duchesne County approved this subdivision in 1982 with the understanding that access to the subdivision was provided by a county road;

WHEREAS, subsequent arbitration proceedings, in 2004, determined that this was not a public road, thus, cutting off public access to the subdivision; and

WHEREAS, numerous attempts have been made to resolve this matter short of formal condemnation and there has been a complete lack of communication from the landowners, or their legal counsel, responding to the County's many letters and phone calls; and

WHEREAS, the Commission finds that the Right-Of-Way is required to bring the above named subdivision into compliance with the other subdivisions within the County; and

WHEREAS, the property impacted by this condemnation includes one parcel of land already encumbered by a private easement; and

WHEREAS, the Commission further finds that it is in the public interest and necessity to acquire the aforementioned right-of-way at the specific location of the above described property; and

WHEREAS, the use of the right-of-way necessitates the acquisition and immediate occupancy of the real property, or interests in real property, hereinafter described; and

WHEREAS, the Commission has previous adopted a resolution to approve the condemnation of said property; and

WHEREAS, it has come to the attention of the Commission that Zions First National Bank is a necessary party to this action and has been included in this new Resolution;

NOW, THEREFORE, be it resolved that:

1. The County Attorney of Duchesne County is instructed and requested to acquire, in the name of Duchesne County, the needed real property, or interests in real property, hereinafter described, by condemnation in accordance with the provisions of the laws, statutes, and Constitution of the State of Utah relating to eminent domain; to prepare and prosecute such proceeding in the proper court having jurisdiction thereof as may be necessary for such acquisition; and to seek from said court an order permitting the County to take immediate occupancy and use of said property as needed.

2. The County Clerk/Auditor is instructed on behalf of the County, to request a warrant from the Duchesne County Treasurer in a sum equal to 100 percent of the approved appraisal of said real property, or interests in real property, payee to be the Clerk of the District Court of Duchesne County, for the use and benefit of the landowners and/or lienholders as hereinafter described.

3. A tender to the landowners and/or lienholders of said sum equal to the approved appraisal of the real property, or a like kind exchange of real property for the property of at least the value to be acquired, for said public improvement shall be made prior to the issuance of an Order to Occupy Property.

4. The real property, or interests in real property, which the County is by this resolution authorized to acquire for said public improvement and use [the "Property"] is situated as follows:

A 66 feet wide right-of-way over part of the NE1/4 of the SW1/4 of Section 12, Township 1 South, Range 8 West of the Uintah Special Base and Meridian, said right-of-way being 33 feet on each side of the following described centerline: BEGINNING AT A PT on the S line of said NE1/4 which is S 89°46'06" E 168.07 FT from the SW Corner of said NE1/4; TH N 39°50'23" W 54.94 FT; TH N 09°38'42" W 41.40 FT; TH N 17°33'55" E 60.28 FT; TH N 30°48'17" E 71.10 FT; TH N 73°53'25" E 244.70 FT; TH N 65°02'24" E 204.13 FT; TH N 53°46'11" E 151.77 FT; TH N 64°53'12" E 64.39 FT; TH S 61°25'17" E 46.95 FT; TH S

44°03'44" E 26.86 FT; TH S 75°55'39" E 36.55 FT; TH N 88°52'46" E 234.69 FT; TH N 77°12'15" E 36.69 FT; TH N 52°41'17" E 30.27 FT; TH N 38°14'58" E 69.72 FT; TH N 61°50'33" E 45.42 FT; TH N 72°12'06" E 70.52 FT to the E line of said NE1/4 at a point which is N 00°07'01" E 555.42 FT from the SE Corner of said NE1/4, said right-of-way containing 2.26 acres, and said centerline being 1490.38 FT in length, and the side lines of said right-of-way to be shortened or lengthened to terminate at the aliquot part lines on which the centerline begins and ends.

5. Title to the estate or interest referred to herein is presently vested in Frank R. Penrod and Terri L. Penrod ["Owners"].
6. Zions First National Bank as Trustee and Beneficiary to a Deed of Trust.
7. No additional persons and entities claim a legal or equitable interest in the property.
8. County is seeking to obtain present possession of the right-of-way.

APPROVED AND ADOPTED by a duly constituted quorum of the Board of County Commissioners of Duchesne County this 28th day of July, 2008.

ATTEST:

DUCHESNE COUNTY:

Diane Freston
County Clerk/Auditor

W. Rod Harrison
Chairman

Kirk J. Wood
Member

Kent R. Peatross
Member

Commissioner Wood motioned to adopt Resolution No. 08-17 as presented. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.

Mrs. Terri Penrod stated that she objects to the value of the property. Commissioner Peatross stated that it has always been the intent to negotiate this out before we go to court because its going to cost the county as well as you money it would be great to get this resolved before then. Attorney Stearmer stated that he will continue to contact Evan Schmutz, our evaluation always starts at the appraisal that is completed if the numbers look reasonable that is always where we go from we can start bumping that number up to a reasonable amount but that number is based off of the appraisal. Chairman Harrison stated that he would really like to resolve this and hopes that Mrs. Terri Penrod can persuade her council into communicating with the county.

Consideration Of Proposal For Gate Canyon Wash Crossings

Attorney Stearmer stated that there have been a few changes to the Engineering Service Agreement (see attached), the reason for article twenty (20) is that there is some language in there that if they provide any information that is propriety we are to keep it confidential; it has to be labeled as such so we have no liability if it gets discussed. He also stated that the other amendment is for clarification on the permit from Stream Alteration to Standard Stream Alteration that means it doesn't do any Wetlands, Archeology, or anything additional; the numbers stay the same.

Consideration Of The Minutes For Regular Commission Meeting Held July 21, 2008

Commissioner Wood motioned to approve the minutes as corrected. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.

Adjournment

Chairman Harrison adjourned the meeting at 2:34 P.M.

Read and approved this 04th day of August 2008.

W. Rod Harrison
Commission Chairman

Diane Freston
Clerk/Auditor

*Minutes of meeting taken by BobbiJo Bailey*_____