



ELBERT COUNTY, COLORADO

The Board of Elbert County Commissioners (BOCC) met in a regularly scheduled meeting on Wednesday, June 26, 2013 with roll call of members as follows:

Robert Rowland- PRESENT

Kurt Schlegel- PRESENT

Larry Ross- PRESENT

The BOCC convened at 9:10 a.m., Chairman Robert Rowland called the meeting to order.

Prayer given by Pastor Walt Rogers from Harvest Bible Church

Pledge of Allegiance

The Board of County Commissioner's meetings are streamed live via the Internet and are recorded for later use

1. Agenda:

- a.** Commissioner Schlegel requested to add item **c.** under New Business:
Modification to the Elbert County Spending Limits per Department.

Commissioner Rowland moved that the BOCC add the issue of new spending limits to the agenda. Commissioner Schlegel seconded, motion passed.

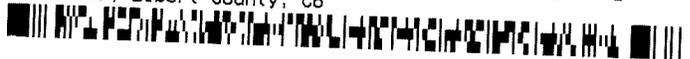
2. Correspondence: NONE

- 3. Consent Agenda:** All matters listed on the Consent Agenda are considered routine by the Board and will be enacted by one (1) motion in the form below. There will be no separate discussion of these items. If discussion is desired on any item(s) and permitted by the Board, those items will be considered separately.

- a. Approval of minutes from June 19, 2013.**

Commissioner Ross moved that the BOCC adopt the Consent Agenda as drafted. Commissioner Schlegel seconded, motion passed.

4. Awards/Recognition: NONE



5. Elected Official/Department Heads/Staff Report: The Elected Officials, Department Heads and Staff Report comments is a time when any elected official or department head may bring forth items of interest or concern.

- a. Ed Ehmann, Director Public Works. Mr. Ehmann stated that there will be an appreciation dinner to recognize the donors and volunteers during the Black Forest Fire. The Dinner will be on July 11, 2013 from 5p.m. to 7 p.m. in the Fairgrounds Exhibit Hall. Everyone that volunteered or donated is welcome to come.

6. Old Business: NONE

7. New Business:

- a. Jerri Spear, Director Health and Human Services. Ms. Spear requested that the BOCC approve the continuation of the current Independent Contractor Agreement with Arnold & Associates for providing certain legal services to the Department of Health and Human Services.

Commissioner Schlegel clarified that this is an extension until we can get a formal request for a proposal for Attorney Services.

Commissioner Ross moved that the BOCC approve and execute the Independent Contractor Agreement between Arnold & Associates and the BOCC, on behalf of the Department of Health & Human Services, regarding the provision of certain legal services to the Department for a term of two months through August 31, 2013, at a rate of \$100 per hour for Attorney's General litigation services, \$40 per hour for paralegal services and \$25 per hour for services of legal assistants. Commissioner Schlegel seconded, motion passed.

- b. Jerri Spear, Director Health and Human Services. Ms. Spear requested that the BOCC approve the Master Public Health Contract Amendment to Contract #13 FAA 42759 for provision of local public health services.

Commissioner Ross moved that the BOCC approve and execute Contract Amendment #1 to the Task Order Contract #13 FAA 42759 between the State of Colorado, on behalf of the Department of Public Health and Environment, and the Board of County Commissioners for Elbert County, on behalf of Elbert County Health and Human Services, to modify the budget in Exhibit C for the provision of local public health services for a maximum contract allocation of \$66,446.50 of state and federal funding. Commissioner Schlegel seconded, motion passed.



- c. Commissioner Schlegel requested that the BOCC approve a modification to the Elbert County Departmental Spending Limits, stating the standing policy is if the expenditure is over \$2, 000 (but still within that Department's budget structure), the Department Head or Elected Official must get approval from the BOCC. He then made a motion that the BOCC raise the spending limit by each Department Head and Elected Officials to \$10,000.00 and to \$15,000.00 for the Public Works Director per expenditure. Commissioner Rowland seconded and opened for discussion. Commissioner Schlegel again spoke in favor of the motion, stating the BOCC still has ultimate authority over any spending that takes place from any Elected Official or any Department Director.

Commissioner Ross spoke in opposition of the motion, stating even though in the case of the Public Works Director, where more flexibility in spending is called for; he feels in light of the overall County operations facing very tight fiscal constraints, now is not the time to relax our limits but is open to discussion and possibly modifying this to be more appropriate.

Commissioner Rowland commented that since the beginning of the year, the County has enacted measures to help manage the business of expenses and expenditures of the County and he supports the motion.

Commissioner Schlegel and Commissioner Rowland voted Aye.

Commissioner Ross voted Nay.

Motion passed.

8. Land Use:

- a. Curtis Carlson, Community and Development Services. Mr. Carlson requested that the BOCC approve a Resolution approving a rezone from A to AR and a Minor Subdivision Development to subdivide into 3 lots with a minimum of 10.1 acres each, by Applicants: Robert and Patricia Mason. Petitioners also request that they not be required to pay the open space fees for the two lots where there are existing homes.

Applicant Robert Mason explained for the BOCC the reason they are requesting they not be required to pay for the open space fee is because they believe they already paid that fee on the entire 40 acre lot approximately 20 years ago. Therefore they feel they should only have to pay the fee for the one new buildable lot.



Commissioner Schlegel directed Staff to comment on the Applicant's belief that they had already paid an open space fee.

Curtis Carlson (Community and Development Services) stated there is no record of open space fees having been paid as there were no such fees at that time for less than 80 acres.

Commissioner Ross asked Community and Development services Staff if they are recommending approval of this Rezone/Minor Development to include payment of the open space fees all on 3 lots? Mr. Carlson advised yes.

Commissioner Rowland asked Community and Development services Staff if this open space fee the applicant alleges was paid in 1999 was in place at that time.

Mr. Carlson stated there was no open space fee for their particular zoning before 2005.

Applicant Patricia Mason commented when they purchased the original 80 acre parcel in approximately 1995 and all fees to subdivide were approved then, they were told to pay an open space fee to get the Planning Commission's blessing.

Commissioner Ross moved that they table this issue for 2 weeks to further examine the issues surrounding the open space fee.

Commissioner Schlegel stated he was not seconding the motion but agreed that there is a zoning and fee structure issue and would like to address Staff to check on this issue. He does not support a motion to waive the fee as it will set a dangerous precedent and recommended they don't put it off as he is prepared to vote on the issue.

Commissioner Rowland commented that he feels he is in a position of not having all the facts and doesn't feel ready to vote. He suggested a 2 week delay in order to investigate the issue further.

Applicant Robert Mason approved the delay on the vote if the BOCC would approve the Rezoning Subdivision pending resolution of their fee investigation.

Kyle Fenner (Director of Community and Development Services). Ms. Fenner clarified that the applicant had one project attached to this particular property



at one point, and that project was paid for. Now there is a new project on that property and it doesn't mean that the money that might have been paid on the old project necessarily applies to the new project.

Grant Thayer (Chairman Planning Commission). Mr. Thayer gave a history of open space fees stating he was on the Planning Commission at the time the Masons were dividing their property. He said there was at that time a \$500.00 Cash in Lieu for Open Space, but no "open space fee", and very little other requirements to the subdivisions of 80 acres or less.

Commissioner Ross withdrew his motion to table this item for 2 weeks.

Commissioner Ross moved that the BOCC approve and execute a Resolution approving RZ 12-0004 Mason Rezone and MD 12-0004 Mason Minor Subdivision. Commissioner Schlegel seconded, motion passed unanimously.

Commissioners Rowland and Ross gave comments regarding the next item on the agenda, Oil and Gas Regulations.

Grant Thayer, Rick Brown and Paul Crisan, all Planning Commission Members, gave their comments on not separating the proposed MOU Template from the Oil and Gas Regulations.

Commissioner Ross clarified the Rules and Regulations as drafted are what is being voted on by the BOCC, not the MOU.

Grant Thayer asked everyone to let Community and Development Services Staff give their presentation.

- b.** Carolyn Parkinson, Community and Development Services. Ms. Parkinson gave a full slide presentation on the proposed Oil and Gas Regulations.

At 11:55 a.m. Commissioner Ross moved to take a 10 minutes recess. Commissioner Rowland seconded, motion passed.

BOCC Meeting reconvened at 12:08 p.m.

Commissioner Schlegel asked Carolyn Parkinson (Community and Development Services) questions about several areas within the document that he felt were in error or not clear.



Commissioner Ross commented his observations are that the Oil and Gas Regulations are a “dynamic document which will adapt over time”. Carolyn Parkinson agreed.

Commissioner Rowland publicly thanked Carolyn Parkinson for her very hard work that is much appreciated.

Kyle Fenner, Director of Community and Development Services. Ms. Fenner clarified the purpose of an Amended MOU is for cases like when a company puts in some wells and they all work well within the guidelines of a single MOU, and then they want to drill a well where the set-backs are different and the pre-negotiated document doesn't fit. That is where an amended MOU can exist.

Grant Thayer offered some of the Planning Commission's reasoning regarding the earlier items of concern to Commissioner Schlegel.

Public Comment

1. Bob Davis – Vice President of finance for NexGen Oil and Gas - Denver. Mr. Davis introduced NexGen to Elbert County and gave some information about the company.
2. Cody Wagoner – Representative of Conoco/Phillips Co. – Watkins. Mr. Wagoner stated the MOU as it has been proposed is not an executable document for them.
3. Mary Steen – Georgia Ranch – Parker. Ms. Steen already has experience with Conoco/Phillips on their ranch and complimented them on how they conduct their business.
4. Brett Forkner – LTE Services Environmental Consultant – Denver. Mr. Forkner supports the current Regulations by the COGCC.
5. Nathan McNally – Elizabeth. Mr. McNally commented based on his experience with Oil and Gas, he supports the current Regulations as they are.
6. Jim Marshall – Centennial. Mr. Marshall questioned the setback requirements and asked that it be re-visited.
7. Tony Corrado – Elbert. Mr. Corrado stated he is disappointed at the discussion of separating the MOU from the Oil and Gas Regulations and will not support it if they are.



8. Susan Shick – Elizabeth. Ms. Shick cautioned against de-coupling the MOU from the Regulations and advised she is likely to bring suit against the County for a regulation she feels really has no standing.

Commissioner Ross clarified it was not his intention to imply that they would not have an MOU in conjunction with the County Regulations but rather they should focus on the complex issue of the Regulations first and then deal with acceptance of an MOU Template.

9. Jamil Bailey – Elbert. Ms. Bailey gave her opinion of the benefits of including an MOU with the Oil and Gas Regulations.
10. Deborah Wilson – Kiowa. Ms. Wilson expressed her concerns on how her home and family will be impacted if their neighbors allow gas exploration to take place on their 35 acres; and asked Elbert County to hold the Oil and Gas Companies accountable to how drilling impacts it's residents.
11. J.B. Condill – Aurora. Mr. Condill commented the terms and language in the proposed documents are completely unacceptable.
12. Michael Dehmlow – Elizabeth. Mr. Dehmlow stated in his opinion these new regulations are ok and do not violate the mineral owners' rights, but believes the MOU should not be separated from the Regulations.
13. Robert Thomasson – Elbert. Mr. Thomasson stated he was disappointed that they are considering separating the MOU from the Regulations, saying this is a mistake and he hopes they will re-consider.

Commissioner Ross again clarified the need for the complex issue of the Regulations, which will become law, being discussed first and then the MOU, which is a template of a negotiable contract, being discussed separately and hopefully adopted by the BOCC. He stated he is entirely behind the idea of an MOU Template.

14. Brett Sanborn – Kiowa. Mr. Sanborn advised he has been approached by a natural resource company to drill on his property and he would like the BOCC to be aware of and take into consideration the costs the landowner suddenly finds he is responsible for if he agrees to negotiate with the company. Mr. Sanborn said the lack of transparency or disclosure from the company is of special concern to him and wants Regulations that protect Elbert County and its citizens.



15. John Duhrman – Editing Committee member – Parker. Mr. Duhrman made the statement that there is nothing in these Regulations that is in conflict with the State and asked the BOCC to vote yes for the Regulations and MOU Template as 1 document.

16. Rick Brown – Planning Commission member. Mr. Brown advised he doesn't feel that separating the MOU template from the Regulations is completely unacceptable but wants to know Commissioner Rowland's and Commissioner Schlegel's intentions.

Commissioners Rowland and Schlegel advised they would address Mr. Brown's question during their individual statements.

17. Nancy Prince COGCC (Colorado Oil and Gas Conservation) – Denver. Ms. Prince clarified and commented on several items that were brought up earlier by the BOCC and public comment.

Commissioners Schlegel and Rowland asked Ms. Prince a few more questions about her knowledge or experience with using an MOU template as part of Regulations.

Ms. Prince advised that Arapahoe County just within the last 6 months had an MOU typed into their Regulations, but they included the operators with the citizens at the table while designing their draft regulations and MOU.

Commissioner Schlegel asked Elizabeth Fire Marshall Kara Krzynski if they are using the 16 ft. or the 20 ft. access road standards for access to any oil or gas operating site. Ms. Krzynski responded the county has adopted the 2006, 16 ft. International Fire Code requirement, but also included in their wording in the Regulations "as adopted".

At 1:35 p.m. Commissioner Ross moved to take a 10 minute break. Commissioner Rowland seconded, motion passed.

Commissioner Rowland declared the BOCC reconvened at 1:48 p.m.

Commissioner Schlegel asked if the Fire Department is able to negotiate for the landowners if the producer wants to build a 20 ft. wide access road instead of a 16 ft. road. Elizabeth Fire Marshall Kara Krzynski advised their main focus is safety and access to the tank battery site and therefore will only consider



reducing the width of the road if they incorporate a turn-around/passing site possibly every quarter mile.

Commissioner Schlegel stated since the existing zoning regulations have only 2 sentences that address oil and gas regulations, it is imperative that we improve that, as everyone will agree that oil and gas development is coming to Elbert County. He then stated zoning regulations should be very specific; the proposed MOU template as presented to the BOCC is good in form, but is inadequate and should be in the form of a checklist (which can change from time to time) of guidelines to follow and is open to negotiation and discussion.

Commissioner Ross stated the regulations and the MOU are 2 separate documents; one a regulation and the other a contract and therefore should be separated. He encouraged Staff to keep working with the Editing Committee and suggested the MOU be put on the BOCC Agenda in 2 weeks when Commissioner Rowland gets back.

Commissioner Rowland commented they have not de-coupled the MOU from the Regulation process, that is not the intent and not what he believes is happening or has happened. What they are talking about is the form and substance and content OF the MOU; its purpose and its execution going forward. He wants to authorize the MOU within the Regulations to cut the best deal we can get.

Both Commissioners Rowland and Schlegel advised they have already started a checklist of guidelines that are more precise than what the existing MOU template covers, stating some of the items may be agreed upon by all parties and some may not, which is why the MOU is a changeable document.

Commissioner Rowland asked Alex Beltz, the Attorney to the BOCC, for his input on the issue of coupling an MOU in the Regulations using Arapahoe County's Regulations as a reference.

Attorney Beltz explained Arapahoe County created an Administrative Use by Special Review contract for Oil and Gas Companies that uses an MOU process that was negotiated up front between the County, the citizens and the Oil and Gas Companies, so it is a standardized form that is no longer up for negotiation. That MOU is used as a guide that instructs them on the final MOU.



Commissioner Ross moved that the BOCC approve and adopt the proposed amendment to the Elbert County Zoning Regulations regarding oil and/or gas operations and regulations, as recommended for approval and as certified by the Elbert County Planning Commission, and as presented by Elbert County Community and Development Services at the June 26, 2013 public hearing.

Commissioner Schlegel seconded.

Commissioner Rowland opened for comment or discussion by the BOCC.

Commissioner Schlegel moved for an amendment to the document they have in front of them in Section 27.1(A), under Authority; he moved that they replace the word "does" in the second sentence with the word "shall". Existing text says "not supersede" and as part of that same motion he moved to include the words, "or pre-empt" State Law, Regulations and Rules pertaining to Oil and/or Gas.

Commissioner Rowland seconded, all 3 voted Aye. Motion passed.

Commissioner Rowland clarified that the passed motion changing some of the wording does not change the content of the Regulations, just uses the same language used in the Colorado Oil and Gas Conservation Commission (COGCC).

Commissioner Rowland seconded, all 3 Commissioners voted Aye, motion passed.

Commissioner Schlegel stated there are numerous instances in this document that would take hours to make word for word changes. He moved that upon approval, they direct the Attorney to the BOCC and Staff get together and make those recommended grammar changes where appropriate, specifying that they will not change the meaning or content of the document.

Commissioner Ross seconded.

Commissioner Rowland opened for comment or discussion by the BOCC.

Commissioner Schlegel again spoke in favor of making the numerous grammatical changes in the form of one motion.



Commissioner Ross emphasized that the motion specify there will be no substantial change in meaning or content.

Commissioner Rowland raised the concern about the interpretation of what the threshold is for “does or does not” change meaning or content.

Commissioner Ross emphasized again to include the words, “will not change the meaning or content of the document”.

Commissioner Rowland asked for a threshold of what does/does not “change meaning” of the document.

Commissioner Rowland then suggested each Commissioner quickly go through the document, marking all their changes to be made and include them in the motion Commissioner Schlegel made as a general statement, so that all the changes are on record and disclosed. Then allow the motion to pass with each of the very specific changes listed that the Commissioners made.

Commissioner Schlegel advised if Commissioner Rowland wants, he will go through the document paragraph by paragraph and list each change, which will take longer, and to that end he withdraws his earlier motion.

Commissioner Schlegel then moved to amend paragraph B under “Purpose”; in the first sentence, strike the words, “values, convenience, order, and prosperity”. So that sentence will now read, “This section of the Elbert County Zoning Regulations is an act to protect and promote the health, safety and general welfare of the present and future residents of Elbert County”.

There was no second on the motion, motion failed.

Commissioner Rowland then moved they go through the document and let each Commissioner list the series of changes that will be identified under one motion, and if the motion passes, those changes will be directed to Staff so they can respond.

There was no second on the motion.

Commissioner Schlegel questioned how that would work; they would then be submitting 3 different versions of the document to Staff with each of the Commissioner’s changes?



Commissioner Rowland clarified the purpose of this motion is to get all the little changes to staff so they can lump them under a single motion and get them off the table so they can address the substantive issues with separate motions.

Grant Thayer, Editing Committee Member suggested the BOCC provide the Editing Committee with a list of all the changes they would like to make and allow them to make those changes on their behalf and present the fully edited document back to the BOCC next week.

Commissioner Ross advised he is aware of only 3 substantial amendments to this document and suggested they go through those motions and clear them out to see where they are with the final document.

Commissioner Rowland withdrew his previous motion and clarified with Commissioner Ross that he is suggesting they go through with the substantive motions now.

Commissioner Ross advised yes to which Commissioner Rowland responded he also thinks that is a good idea.

Commissioner Schlegel advised he still believes this document is not ready. He stated he has at least 32 amendments to the document in its current form, some substantial, some small wording changes that need to be cleared up, to make it a definitive guidance document. He recommended they send the document back to staff with "red line" comments so they can be compiled then brought back to the BOCC.

Commissioner Ross suggested that Commissioner Schlegel proceed with his amendments.

Commissioner Rowland asked if Staff had any comments.

Carolyn Parkinson from Community and Development Services cautioned Staff about making a lot of changes to this document in a public hearing forum. She reminded them they have the option to continue this to the next week or two weeks as Commissioner Schlegel recommended. She stated from her lengthy experience, when this many changes are made in a public hearing, they often



end up with unintended consequences. She recommended sending the red-line copy back to Staff and finish at a later BOCC Meeting.

Commissioner Ross again suggested they go through with the changes today, citing his concerns over the original document remaining substantially intact to the finish.

Commissioner Rowland questioned if they do send the document to staff to make small grammatical changes, and the corrected document is brought to the next BOCC meeting for a blanket motion covering all those small changes, do they need to allow for Public Comment on those changes?

Carolyn Parkinson responded by saying in the past, with these types of changes, the BOCC has appropriately made public what those changes would be and sometimes would provide for additional public comment and sometimes not, at the discretion of the BOCC.

Commissioner Ross again expressed the advantages of going on with the document changes right now, stating the public would be able to see how they present and respond.

Commissioner Rowland again asked Staff if they had any comments.

Kyle Fenner, Director of Community and Development Services agreed with comments made by Carolyn Parkinson with respect to unintended consequences and assured Commissioner Ross they can protect the document and make proposed amended changes if the BOCC will send it back to Staff.

Commissioner Ross said he preferred working through the document today, as each change will have to be addressed one by one, today or later; but was not against being accurate at the same time and sending it back to staff if she could assure the process of document control and insure that everything is above suspicion in the nature of how it is done.

Kyle Fenner again assured the document will be protected and the process of document control will remain intact. She guaranteed the Commissioners that the document they will be working from will be their original document.

Commissioner Rowland commented that there WILL be some motions to this document by the Commissioners and it is his belief that this document is so



important that it does warrant keeping it transparent in the process and available for additional public comment. He felt at this point they should follow the suggestions of Planning: Carolyn, Kyle and Grant.

Commissioner Ross suggested they continue this meeting 2 weeks from today, same setting, same time, same place, with the opportunity for the public to view ahead of time all the changes proposed and make comment and see how they are voted upon before they are incorporated into the final document.

Commissioner Schlegel then suggested they move forward with this document and start today.

Commissioner Rowland moved that the BOCC table this issue until July 10, 2013 at the Regular BOCC Meeting commencing at 9:00 a.m.

Commissioner Ross seconded.

Commissioner Schlegel made a comment on the motion, clarifying that Commissioner Rowland wishes to table the issue, meaning no changes will be submitted to staff, this issue will cease moving forward until 2 weeks from today.

Commissioner Rowland advised that was NOT his intention. He then changed his motion to “be continued” until July 10, 2013 at the BOCC Meeting at 9:00 a.m., at this building, same time, same place.

Commissioner Schlegel clarified this means they will give their “red-line” track change documents to staff to pull together and have that ready in two weeks?

Commissioner Rowland advised yes.

Commissioner Schlegel advised he was all in favor of that.

Grant Thayer, Edit Committee Member asked if they could hear today the substantial changes they will be proposing.

Commissioner Rowland advised Mr. Thayer he would have his today.

The motion to continue this meeting on July 10, 2013 having been seconded, passed. All 3 Commissioners voted Aye.

Commissioner Schlegel stated that since the next item of business relates to the fee schedule for Oil and Gas, and since we do not have a Regulation in place, he moved that they also continue the next agenda item until July 10, 2013.

Commissioner Ross seconded.

Commissioner Schlegel clarified for the public the reason they are considering a fee schedule modification is because the fees they are currently charging for an oil and gas facility do not even cover our Staff costs.

The motion having been seconded, passed with all 3 Commissioners voting Aye.

Commissioner Ross stated out of respect to all the efforts by all involved in this process, he moved that in two weeks, they also bring forward the MOU format before the public for a vote.

Kyle Fenner, Director of Community and Development Services agreed there are people waiting on this issue but one of her staff people will be out all next week and it might be difficult to have the MOU preparation ready in two weeks.

Commissioner Ross commented that the Attorney to the BOCC advised him they could go ahead and submit the proposed changes and create a new draft of the MOU and circulate it. Can this possibly expedite this process so it can be adopted concurrently with the Regulations as amended?

Commissioner Rowland advised he was not prepared to produce a list for the MOU template or put it on the Agenda in 2 weeks.

In the absence of a second on the motion, it did not pass.

Commissioner Schlegel advised he still does not believe the MOU is part of the Regulations and should not hold up the process of the Regulatory document which will be on the Agenda in 2 weeks.

Commissioner Rowland clarified that the reason for the continuance is for the Regulations and the MOU is a separate issue.



Commissioner Ross then stated he agrees with Grant Thayer in providing the Editing Committee with their proposed changes during the next 2 weeks.

Commissioner Schlegel also advised he will make his proposed changes available today.

9. Alex Beltz, Attorney to the Board of County Commissioners: NONE

10. Public Comment: The public comment period is a time when any citizen may bring forth items pertaining to County business. During this time each individual will have three minutes to present their view(s) on County matter(s). In the interest of time, please have your comments prepared for presentation as each person will be allowed one (1) opportunity to approach the podium. Please keep your comments to a three (3) minute maximum. No formal action will be taken on these items during this time due to open meeting provision; however, the items may be placed on a future posted Agenda if action is required. The public comment portion of the BOCC meeting is not to be used for political or campaign purposes; comments and questions should be limited to matters of current County affairs and business. When you approach the podium please identify yourself, spell your last name and give your address. **All Public Comment was heard after the motion for Oil and Gas Regulations**

Meeting Adjourned at 3:01 p.m.



BOARD OF COUNTY COMMISSIONERS

ELBERT COUNTY, COLORADO

Robert Rowland, Chairman

Larry Ross, Vice Chair

Kurt Schlegel, Commissioner

ATTEST: Diana Hartsough

County Clerk



BY:

Clerk to the Board of County Commissioners