

**Logan County Commissioners Work Session
November 24, 2020**

Present: Joe McBride, Byron Pelton, Jane Bauder, Alan Samber, Valerie Richards, Marilee Johnson, Jerry Casebolt, Jim Aranci, Chuck Miller, Debbie Unrein and Jennifer Crow.

Chairman McBride called the meeting to order at 9:00 a.m.

APPROVAL OF MINUTES FROM PREVIOUS SESSION- Commissioner Bauder moved to approve the minutes of November 17, 2020 as written. Commissioner Pelton seconded and the motion carried.

REVISIONS TO WORK SESSION AGENDA – None.

REVIEW AND APPROVE DEPARTMENT OF HUMAN SERVICES SCHEDULE OF BILLS- Valerie Richards met with the Board to review the Logan County Department of Human Services schedule of bills dated November 24, 2020. The Board approved all bills as presented.

COMMISSIONERS PROCEEDINGS OCTOBER 2020 – Commissioner Pelton moved to approve the Commissioners Proceedings for the month of October 2020. Commissioner McBride seconded and the motion carried.

CARES ACT FUNDING – Commissioner Bauder is working with several businesses on their Cares Act applications. Twenty-five applications have been received equaling approximately \$900,000. The applications are being reviewed as they come in so that they can be processed as soon as the deadline closes on November 30, 2020.

RIGHT TO CERTIFY PROPERTY TAXES - Jim Aranci and Chuck Miller met with the Board to discuss the Lower South Platte Water Conservancy District (LSPWCD) mill levy certification in 2019. The LSPWCD raised their mill levy from ½ mill to 1 mill levy in 2019. Mr. Aranci explained that he was president of the LSPWCD Board for one year. He believes that the increase in mill levy should go to a vote of the people. Aranci attended a LSPWCD board meeting in December 2019 where the mill levy increase was discussed and stated his opposition to that board due to the lack of a vote on the matter. In 1996 LSPWCD passed a ballot measure to “De-Bruce.” The last sentence of the ballot measure stated that “No local tax or rate or property mill levy shall be increased at any time, nor shall any new tax be imposed without the prior approval of the voters of the LSPWCD.”

Aranci discussed the certification with each member of the Board of Commissioners last December and asked the Commissioners not to certify. The Board of County Commissioners (BOCC) approved the certification of levies as a ministerial act.

The (BOCC) received a letter during the summer from the Tabor Committee Foundation stating that the LSPWCD mill levy increase was wrong. The Tabor Act takes precedent over any other statute. The LSPWCD mill levy was locked in place at the time of Tabor adoption in 1992. Aranci believes the LSPWCD violated the Tabor Act and their own ballot measure by not putting the increase to a vote of the people.

Commissioner Pelton explained why the BOCC made their decision last year to approve the certification. Commissioner Pelton referred to the Bolt decision which manifests that the manner of the levying is purely a ministerial capacity as an agent of the State. There is no authority for the Board to act with its own judgement on the levy. Nor does the BOCC have power to modify the levy certified by LSPWCD neither can the BOCC refuse to impose the mill levy.

Chuck Miller, of Brush, Colorado commented on the Bolt case. Miller asked about the correlation between a school district and the LSPWCD. County Attorney Alan Samber explained that the Bolt decision applies equally to a water district, fire district or any other taxing district. The decision says that the BOCC can't tamper with the mill levy certified by the school board. The Bolt case binds this BOCC and every other county board in not being able to use its own judgement in determining whether a lower jurisdiction violated Tabor and refusing to extend the levy.

Chuck Miller asserted that he was not aware that any commissioner discussed the Bolt case prior to December 22, 2019 when the mill levies were certified. The Board explained that the Bolt case was used last year during the time when the certification was being discussed. In fact, Commissioner Pelton forwarded an e-mail to Mr. Aranci in 2019 that explained the reasoning behind the certification.

Miller asked the BOCC if the members believed that a ministerial act needs to be supported with law. Alan Samber explained that a ministerial act requires a set of facts. It is something that the BOCC exercises by virtue of county commissioners when the law imposes upon them a duty to extend the levy that is certified to it by a lower jurisdiction. In performing a ministerial act, the BOCC does not have discretion not to perform that duty if it is an act of law that requires them to perform that duty by virtue of the office they hold.

Miller then asked whether each member of the BOCC believes that the increase in the 2019 mill levy was within the law. Alan Samber has not looked at how the water district was created and the De-Brucing that was passed for the district. The water district's legal counsel thinks they are on high ground. Samber also explained that the constituents of that district have a legal remedy, and could file a lawsuit. Commissioner Pelton did not believe the levy was constitutional. Commissioners McBride and Bauder agreed. All Commissioners were concerned about it, but with the evidence the BOCC was given, they had to perform the ministerial act.

The attorney for the LSPWD believes they are able to apply the levy because they are not exceeding a statutory cap of one mill that exists for that district, based on its size. In some of the court decisions, including the Bolt decision, there are circumstances where a vote is not necessarily required for every mill levy increase. If the BOCC does not certify the LSPWCD mill levy at one mill and takes it down to one-half mill, the BOCC could get sued by the LSPWCD.

Miller, referring to the Bolt Decision, stated that when there is no increase, it is a ministerial act, the Board has no ability as a BOCC to question anything. The Board disagreed. Commissioner Pelton read from the decision: "We have held that the Board of County Commissioners may not refuse to impose the mill levy. The Board of County Commissioners, nevertheless have been powerless to avoid making levy in accordance to the school district's budget certification. Under Louden the Board of County Commissioners discretion is limited to determining whether the levy exceeds the maximum number of mills allowed by statute." Alan Samber added that it's one mill.

Miller noted that in 1996 the LSPWCD froze the mill levy at a half mill at the time they De-Bruced by a vote of the public. Their bylaws state that they have a right to apply one mill, but they have never certified that full mill.

Commissioner Pelton continued reading: “Accordingly the Board of County Commissioners has no authority to refuse to impose a levy certified by the school district because it violates Amendment One.”

Commissioner Bauder asked why these citizens are not getting an attorney and going to the LSPWCD Board to pursue their case. Miller responded that the people rely on the Commissioners to uphold the constitution and it is very clear about Tabor laws.

Miller requested that this become an agenda item on the BOCC December 15th meeting. Mr. Aranci or Mr. Miller will have a written presentation to provide all the facts with their lawyer doing pro bono work on behalf of the taxpayers.

Alan Samber noted that Boards of County Commissioners do not have all powerful, all encompassing power to do whatever they see fit, or whatever sounds just. Counties are political subdivisions of the state and Counties only have powers expressly given to them by state law.

Miller brought up C.R.S. 39-1-111, paragraph three. “If the BOCC or other body authorized by law to levy taxes, fails to certify such levies to the assessor, it is the duty of the assessor upon direction of the Division of Local Government, to extend the levies of the previous year, subject to the limitation prescribed in Section 29-1-301 C.R.S.” Miller feels that this was something that could have been done in 2019 which would have set the LSPWCD mill levy at ½ mill, then the LSPWCD would have to determine how they were going to move forward.

Alan Samber does not read that statute to imply that this board can selectively choose not to extend the levy of individual taxing jurisdiction. That statute applies when, for whatever reason, whether war, pandemic or whatever, the BOCC are unable to meet as a Board to extend the levy, by operation of law, the levy imposed in the prior year continues, even though the Board did not have an opportunity to act on it.

Commissioner Pelton noted that the situation is being brought up to the CCI Legislative Council for further guidance. Taxing jurisdictions are independent legal entities. The BOCC does not have oversight over the lower taxing jurisdictions. This Board does not govern them, they have their own Boards. They are created as separate legal entities by state statute.

Alan Samber noted that there was a presentation by Colorado Counties, Inc. reviewing proposed legislation during the County Attorney Conference held last Friday. One of the topics was the mill levy certification process. The proposed legislation will allow the BOCC to delegate a budget officer certification if they so desire. The certification requires a formal resolution to be passed by the Board in a short time frame after the budget is adopted. Since the Boards can’t really do anything to change the mill levies that are certified to it anyway, why does the BOCC have to certify the levies.

Miller and Aranci will be added to the Commissioners Business Meeting Agenda on December 15, 2020 to present information It falls on the LSPWCD.

COVID UPDATES - Jerry Casebolt updated the Board on Covid. The Curative testing van showed up in Morgan County at 2:00 p.m. Sunday. Testing was supposed to take place between 7 a.m. and 2 p.m. They claimed issues with their van. Casebolt found out after the fact that Curative is having staffing issues. All testing was canceled for the entire region the remainder of the week. They have ads in the newspaper hiring people for \$25 per hour to do the testing.

Testing is still on for next Monday, but they will not know until next Sunday. The state is upset with Curative, who was awarded a contract to do the testing. The State testing team was offered. But test results could not be guaranteed by Wednesday. Test results will not be back until Saturday or Sunday.

There being no further business to come before the Board, the meeting adjourned at 9:57 a.m.