

**BOARD OF ADA COUNTY COMMISSIONERS
MINUTES OF THE OPEN BUSINESS MEETING REGARDING DYNAMIS
TUESDAY, OCTOBER 23, 2012
8:45 A.M.**

The Board of Ada County Commissioners (Board) met this date in an Open Meeting in the Ada County Public Hearing Room of the Ada County Courthouse Complex to act on the following items. Staff members present: Ted Argyle, Prosecuting Attorney's Office. Minutes Recorder: Judy Morris.

I. IN THE MATTER OF CALL TO ORDER:

Commissioner Rick Yzaguirre called the meeting of the Ada County Commissioners to order at 8:44 a.m.

II. IN THE MATTER OF ROLL CALL:

Commissioners Rick Yzaguirre, Sharon M. Ullman and David L. Case were present.

III. CHANGES TO THE AGENDA:

There were no changes to the agenda.

IV. NEW BUSINESS:

Public Hearing

1. Resolution

- Resolution No. 1863 - Resolution Affirming Industrial Park, Affirming Name, and Restricting Uses Therein

R. Yzaguirre read Resolution No. 1863 into the record and opened the public hearing. He then read the content of the resolution into the record.

Kristin Stilton stated her name and address for the record. She provided the Board her credentials and presented testimony opposing the resolution. She testified that the phrase ARTIC, referred to in the resolution, was originally coined through a press release on June 30, 2010, announcing the signing of Dynamis to the project. She said the phrasing and announcement did not, however, change the actual base zoning of the property in question from Rural Residential to an Industrial Park. She referred to the *American Land Planning Law* by Norman Williams Jr. and John M. Taylor and argued that a privately owned, for profit, power plant was not an ancillary use to the services and allowable uses as described in a sanitary landfill or a convenience to or a necessity to the outlying principal use. She testified that she did not believe an Industrial Park zoning was previously established. She argued that the Board needed to follow the process of changing the base zoning from Rural Residential to General Industrial M2 in order to finalize the lease with Dynamis. She discussed the additional uses that would be allowed under the General Industrial M2 zoning and discussed the process required to change zoning designations. She stated that she believed Resolution No. 1863 was premature at this time.

D. Case asked T. Argyle if Resolution No. 1863 was changing the base zoning from current Rural Residential to an Industrial designation. T. Argyle replied it did not change the existing zoning designation.

Attorney Richard Boardman of Perkins Coie stated his name and address for the record. He stated his firm represented Dynamis Energy and he was present as a spokesperson for Dynamis Energy. He said the company was restating their support for the Ada Renewable Technology Industrial Complex that was first announced by the Commission in June of 2010. He said there are a number of renewable energy firms in the state of Idaho and the Pacific Northwest. He stated that the industry has developed extraordinary technologies in processing the substantial volume of daily solid waste that ends up in landfills. He encouraged the Board to continue to provide visionary leadership and support for additional development of environmentally friendly ways to manage the County landfill.

D. Case asked R. Boardman if he was familiar with the contract and franchise agreements that the County has entered into with Dynamis and the timelines associated with the documents. R. Boardman confirmed he was. D. Case asked R. Boardman if he agreed that some of the timelines have been missed. R. Boardman agreed that some of the timelines have been pushed back due to circumstances not totally in the control of Dynamis, including the current DEQ permitting.

Allison Sesmon stated her name and address for the record. She presented testimony stating that she believes the County has not properly explained the process or allowed time for the public to attend meetings and understand the issues. She said the city mayors have deemed the project unnecessary and undesired.

Don Pollari stated his name and address for the record. He stated that state code required 15 day notice of hearing on a resolution. He reaffirmed the testimony of K. Stilton that the County has not followed the proper process for changing the zoning.

S. Ullman requested D. Pollari advise the Board what section of code he was referring to regarding the 15 day notice requirement for the resolution. D. Pollari said he was unable to quote it at this time, but could provide it later.

D. Case asked T. Argyle if the resolution was legal and whether the industrial park designation could be made by affirming the zoning within the resolution. T. Argyle said the zoning of the existing site did not change by the resolution before the Board. D. Case asked T. Argyle to explain if the resolution was affirming or reaffirming the designation. T. Argyle stated that he was unable to locate a written record that adoption proceedings took place in June of 2010 and that the resolution was affirming that the property is designated as an industrial park. D. Case asked if there was a need for a comp plan amendment to be completed through the zoning process for the industrial park designation. T. Argyle explained that there was no need for a comp plan amendment as the existing use was established by the zoning ordinance change that was done on July 27, 2011. He said the landfill is already in existing use and fully permitted. He stated that Ordinance 772 allowed the particular use in question through the ancillary waste reduction language.

Lynn McDonald stated her name and address for the record and presented testimony asserting that the public's questions were not being answered.

R. Yzaguirre explained that the purpose of the public hearing was for the public to have any opportunity to provide input on the resolution, not pose questions. R. Yzaguirre and S. Ullman responded that the Dynamis project had been discussed in several venues.

R. Yzaguirre closed the public hearing.

ACTION: S. ULLMAN MOVED TO APPROVE RESOLUTION NO. 1863 AS LISTED ON THE AGENDA. R. YZAGUIRRE SECONDED.

DISCUSSION: D. CASE REITERATED HIS CONCERNS REGARDING THE PROJECT AND CONTINUING TIMELINE VIOLATIONS OF THE CONTRACT AND OFFERED A SUBSTITUTE MOTION.

ACTION: D. CASE MOVED THAT ALL CONTRACTS AND FRANCHISE AGREEMENTS REGARDING THE DYNAMIS WASTE TO ENERGY PROJECT BE VOIDED AND TERMINATED DUE TO THE TIMELINE VIOLATIONS OF THE CONTRACT; AND TO CALL FOR THE TWO MILLION DOLLARS THAT IS OWED TO THE COUNTY. THE MOTION FAILED FOR LACK OF SECOND. R. YZAGUIRRE CALLED FOR THE VOTE ON THE ORIGINAL MOTION.

ACTION: S. ULLMAN, AYE, AND R. YZAGUIRRE, AYE. D. CASE, NAY. THE MOTION CARRIED.

2. Agreement

- Agreement No. 9814 - Lease Agreement Between Ada County and Dynamis Energy, LLC

R. Yzaguirre read Agreement No. 9814 into the record.

ACTION: S. ULLMAN MOVED TO APPROVE AGREEMENT NO. 9814 AS LISTED ON THE AGENDA. R. YZAGUIRRE SECONDED.

DISCUSSION: D. CASE AGAIN REITERATED HIS CONCERNS REGARDING THE PROJECT.

ACTION: S. ULLMAN, AYE, AND R. YZAGUIRRE, AYE. D. CASE, NAY. THE MOTION CARRIED.

VI: IN THE MATTER OF RECESS:

There being no further business to come before the Board at this time, the meeting was recessed at 9:10 a.m.

Rick Yzaguirre, Chairman

ATTEST:

Christopher D. Rich, Ada County Clerk