

COLORADO COUNTY COMMISSIONERS COURT
NOTICE OF OPEN MEETING

DATE OF MEETING: October 22, 2019 – 11:00 A.M.
BUILDING: Colorado County Courthouse, County Courtroom
STREET LOCATION: 400 Spring Street
CITY OF LOCATION: Columbus, Texas

Pursuant to the authority granted under Government Code, Chapter 551, the Commissioners Court may convene in a closed meeting to discuss, deliberate and take action on any of the agenda items listed below. Immediately before any closed session, the specific section or sections of Government Code, Chapter 551, which provides statutory authority, will be announced.

On this the 22nd day October 2019, the Commissioners Court of Colorado County, Texas met in Special Session at 11:00 A.M., in their regular meeting place at the Colorado County Courthouse, County Courtroom, 400 Spring Street, in the City of Columbus, Texas.

The Following Members were present, to wit:

Honorable Ty Prause	County Judge
Honorable Doug Wessels	Commissioner Precinct #1
Honorable Darrell Kubesch	Commissioner Precinct #2
Honorable Tommy Hahn	Commissioner Precinct #3
Honorable Darrell Gertson	Commissioner Precinct #4
By: Nancy Davenport	Deputy County Clerk

Kimberly Menke, County Clerk was unable to attend meeting.

County Judge Ty Prause called the meeting to order at 11:02 A.M., followed by Pledges to the United States Flag and Texas Flag.

DELIBERATE AND CONSIDER ACTION ON THE FOLLOWING ITEMS:

__1. Agenda as posted.

Motion by Commissioner Wessels to approve Agenda; seconded by Commissioner Kubesch; 5 ayes 0 nays; motion carried, it was so ordered.

(See Attachment)

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
OCTOBER 22, 2019**

**COLORADO COUNTY COMMISSIONERS COURT
NOTICE OF OPEN MEETING**

FILED FOR RECORD
COLORADO COUNTY, TX

2019 OCT 18 PM 11:55

KIMBERLY MENKE
COUNTY CLERK

N.D.

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DELIBERATE AND CONSIDER ACTION ON THE FOLLOWING ITEMS:

1. Agenda as posted.
2. **CLOSED SESSION:** Pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with the County's attorney regarding pending or contemplated litigation, and to authorize any required, necessary or possible action deemed to serve the best interests of Colorado County, Texas.
3. **OPEN SESSION:** Pursuant to Section 551.102, Texas Government Code, to take final action, decision, or vote on the matter(s) deliberated in the closed meeting of Colorado County Commissioners Court.
4. Adjourn.

The Colorado County Courthouse is wheelchair accessible and accessible parking spaces are available

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- __2. CLOSED SESSION:** Pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with the County's attorney regarding pending or contemplated litigation, and to authorize any required, necessary or possible action deemed to serve the best interests of Colorado County, Texas.

Judge Prause stated it is 11:04 AM, the Court will go into CLOSED SESSION: Pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with the County's attorney regarding pending or contemplated litigation, and to authorize any required, necessary or possible action deemed to serve the best interests of Colorado County, Texas.

- __3. OPEN SESSION:** Pursuant to Section 551.102, Texas Government Code, to take final action, decision, or vote on the matter(s) deliberated in the closed meeting of Colorado County Commissioners Court.

Judge Prause stated at 12:42 PM, the Court is back in OPEN SESSION: Pursuant to Section 551.102, Texas Government Code, to take final action, decision, or vote on the matter(s) deliberated in the closed meeting of Colorado County Commissioners Court. Judge Prause informed that at 12:10 PM, Commissioner Hahn left and therefore will have no vote for Open Session.

At this time Judge Prause stated there were (2) Public Comment Rules Forms completed: (1) by Eliot P. Tucker and (1) by Christopher Hardy.

Mr. Tucker handed to the Court a Short History of the Five Year Dispute he was addressing today in Court regarding Objections of I. V. Duncan Ranch LP LLP to the proposed Compromise Settlement Agreement with Colorado County as drafted by Christopher Hardy, Counsel for John Matthews, Leslie Carey and John Carey. Christopher Hardy was present and was in Court on behalf of John Matthews, Leslie Carey and John Carey.

Motion by Commissioner Kubesch to approve to authorize County's Attorney Bob Bass to pursue collection of abated taxes with KWI; seconded by Judge Prause; 4 ayes 0 nays; motion carried, it was so ordered.

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Motion by Judge Prause to authorize County's Attorney Bob Bass to continue to attempt to reach a final compromise and settlement agreement with the Matthews parties on CR 79; seconded by Commissioner Gerson; 4 ayes 0 nays; motion carried, it was so ordered.

(See Attachments)

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Colorado County Commissioners' Court

Public Comment Rules

1. Citizens wishing to speak must sign in on the bottom of this sheet.
2. Public comment will be limited to five (5) minutes per person and thirty (30) minutes per agenda item.
3. Citizens will be allowed to address only items that are on the agenda and as indicated on the bottom of this sheet. A separate sheet must be filled out for each agenda item to be discussed.
4. All comments must be addressed to the Commissioners' Court.
5. The Court may make a request for information from the floor on an "as needed" basis, as determined by the Judge or a Commissioner.
6. The Judge (or Judge pro tem) has full and final authority to amend or terminate any of the above.

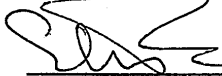
Please remember that this is an "Open Public Meeting" and not a "Public Hearing". Very specific rules apply to each.

Public Participation Form

Name (please print) Eliot P. Tucker

Which agenda item do you wish to address? CR 79 - Proposed settlement

In general, are you for or against this agenda item? For Against



Signature

Note: This form must be presented to the County Clerk (or assistant) prior to the time that the agenda item you wish to address is discussed before the Court.

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FILED FOR RECORD
COLORADO COUNTY, TX

In the Colorado County Commissioners Court

OCT 22 AM 9:37

at a

KIMBERLY MENKE
COUNTY CLERK

Hearing Scheduled for October 22, 2019 at 9 AM

in the

Courtroom of the Colorado County Commissioners Court

at the

Colorado County, Texas Courthouse.

**Objections of I.V. Duncan Ranch LP LLP to the proposed
Compromise Settlement Agreement with Colorado County
as drafted by Christopher Hardy, Counsel for John
Matthews, Leslie Carey and John Carey**

Short History of this Five Year Dispute

On October 9, 2014, John Matthews and Lesley Carey and John Carey, acting together, erected a sign on County Road 79's right of way. The sign faced traffic on County Road 79 headed toward the new Duncan Ranch - Alleyton gravel mine site that was about to begin operations. The sign says, "NO TRESPASSING, NO ACCESS, PRIVATE ROAD, KEEP OUT, VIOLATORS WILL BE PROSECUTED." In late 2014, John Matthews and Lesley and John Carey filed a petition in the Colorado County Commissioners Court seeking an order from the court that, if granted, would have closed a portion of Colorado County Road 79, a long existing First Class Road to and from Duncan Ranch's Colorado River bottom land. Closing that portion of County Road 79 at that time would have prevented the commencement of the already contracted for gravel operation on Duncan Ranch land.

After hearings on January 5 and 30, 2015 the Colorado County Commissioner's Court denied Matthews's and the Carey's petition to close County Road 79.

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That should have ended this dispute. It did not.

On February 9, 2015, Matthews sued the County in district court seeking a court order, an injunction, to close permanently that portion of the county road. Due to the threat of Matthews's suit (not the merits of the suit, which were zero) the County stopped maintaining that portion of County Road 79 in part of 2015 and in part of 2016, at least. The effect of Matthews's baseless suit as well as actions of Lesley Carey and John Carey delayed the start of gravel operations on Duncan Ranch for 14 months. The Carey's actions and Matthews's suit based on a sworn falsehood delayed significant economic activity benefiting many businesses and individual employees and contractors in Colorado County and delayed payment of substantial revenue to Duncan Ranch.

This dispute should have ended with this Court's denial of Matthews's and the Carey's petition. It did not. Instead, the dispute continues to this day.

The 25th District Court of Colorado County, Judge Olds, dismissed Matthews's suit. That should have ended this dispute. It did not.

The First Texas Court of Appeals and the Supreme Court of Texas affirmed that dismissal and refused to reverse what Judge Old had ordered. That should have ended this dispute. It did not.

On August 15, 2016, this court ordered John Matthews, by name, to remove the signs and posts and cameras the Matthews and Carey's had erected on the road. On October 8, 2018, the district court issued an order from the bench ordering the signs and posts and cameras be removed from the road. Those two orders should have ended this dispute. They did not. Matthews and the Careys defied this Court's and the District Court's orders. Those signs and posts and cameras are still on the road in the County's right of way to this day.

On February 6, 2019, the District Court entered a Partial Judgment declaring as a matter of law that County Road 79 was a public road from its west end to its east end. That did not end the dispute.

On April 16, 2019, in a suit filed by Duncan Ranch against John Matthews, Lesley and John Carey, a jury of 12 Colorado County citizens found unanimously that

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John Matthews and the Carey's had intentionally interfered with the gravel contract between Duncan Ranch and Alleyton Resource Corporation. The jury awarded Duncan Ranch every dollar of its loss from the delay caused by the Matthews and Careys, \$233,714.

The jury also found that neither John Matthews nor Lesley Carey nor John Carey had a good faith belief that Matthews had a private road on or in County Road 79. (Not only was Matthews's SWORN claim, in his lawsuit against the County, that he had a private road on County Road 78 not a true fact, the jury found Matthews and the two Careys did not even have a good faith belief that Matthews's claim was true.)

The jury found unanimously that all three Defendants acted with MALICE - defined by the District Court judge as "a specific intent by a defendant to cause substantial injury or harm to Duncan Ranch." Based on that finding and the undisputed evidence of the amount of attorney' fees Duncan Ranch had incurred at that time (over \$400,000), the jury awarded Duncan Ranch \$400,000 in exemplary damages.

On June 5, 2019, the District Court entered judgment against all three Defendants ordering them to pay Duncan Ranch a total of \$633,214 plus interest. The Defendants did not appeal. The Defendants have paid Duncan Ranch the full amount of the judgment plus some interest.

That ought to have ended this dispute. It did not.

OBJECTIONS OF DUNCAN RANCH

JOHN MATTHEWS NOW COMES TO THIS COURT THROUGH HIS LAWYER, CHRIS HARDY, REJECTING THE COUNTY'S REASONABLE SETTLEMENT OFFER AND DEMANDING THAT THE COMMISSIONERS COURT AGREE TO AN INJUNCTION IN DISTRICT COURT IN FAVOR OF MATTHEWS AGAINST THE COUNTY, AND MORE.

Bob Bass drafted a reasonable settlement offer in the County's suit against Matthews, and sent it to Matthews and the Carey's lawyer, Chris Hardy. The County has settled the issues of the road's width and location and status with the Bauers and with Duncan Ranch. Those settlements are that the County's right of

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way adjacent to and north of the Bauer land and the Duncan Ranch land is now 40 feet wide. The right of way extends south to the edge of their land from the northern boundary of the road, which is 40 feet north. That boundary is also the southern boundary of Alleyton land and other Duncan Ranch land north of the road. The Bauers and Duncan Ranch both own land south of County Road 79 adjacent to the road and also adjacent to Matthews's land. That is, Matthews land is also south of the road and is in between the Bauer's land and the Duncan Ranch land.

Bass's proposal to Matthews and Hardy was that the same current 40 foot County right of way would be located the same way, adjacent to and north of Matthews's land, matching up with the right of way on both sides of Matthews land. This would complete the 40 foot right of way from Anderson Road to the Duncan Ranch cattle guard and gate which is the west end of the road.

Before a description of what Matthews, through Mr. Hardy, did to the County's proposal, the current situation of these lawsuits needs explaining.

First, and most important, Matthews now has no lawsuit against the County. It was dismissed. He cannot file another suit claiming he has a private road seeking an injunction against the County again. John Matthews testified under oath that the County never came on his land. He has filed and lost a false claim he did have a private road and cannot do that again.

The County has a lawsuit pending against Matthews. The County has been successful at every stage of this litigation. Matthews has lost at every stage of this litigation. Duncan Ranch still has a lawsuit pending against Matthews to establish that the County right of way adjacent to Matthews's land is just like it is adjacent to Duncan Ranch and Bauer land. Already the District Court has ruled the road is a public road from end to end. What is left regarding the road itself is to establish its current 40 foot right of way, extending from the Alleyton land north of the road south, 40 feet, to the edge of Matthews's land, and removal of the signs, posts and cameras now and forever.

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Bob Bass's settlement draft does that. Hardy's revision does not.

Chris Hardy's and Matthews's revision of Bob Bass's settlement draft contains DEMANDS by Matthews, as follows:

1. A DEMAND that the County agree to a District Court order, a permanent injunction, in favor of Matthews and his heirs against the County. (You cannot get an injunction without a lawsuit.)
2. A DEMAND Colorado County never widen County Road 79's right of way adjacent to Matthews's land more than its current 40 feet. (You cannot get that without a lawsuit or even with a lawsuit.)
3. A DEMAND that the Commissioners Court act in violation of Texas Transportation Code Section 251.007 by agreeing never to further widen the road. County Road 79 is a First Class Road. Section 251.007 defines the width of a First Class Road (40 to 100) feet and prohibits all commissioners courts from reducing any First Class Road's to a lower class road. The Commissioners Court agreeing never to widen the road beyond 40 feet would lower the road's status as a First Class Road which by law can be as wide as 100 feet. Lowering the status of a First Class Road is prohibited by Section 251.007.
4. A DEMAND that the District Court sign a Judgment against the County that **does not include** any specific order that Matthews remove these signs and posts and cameras or other obstructions from the 40 foot right of way. (Without a specific order from the District Court regarding the width of the road and its exact location, the obstructions will be in the road's right of way forever, it seems.) More specifically, Duncan Ranch needs a specific District Court order that it can use to go to court to enforce if need be. The history of the Defendants' defiance dashes any hope they will act reasonably without a contempt of court sanction. The District Court is in a better position to do that than this Court.
5. The description of Matthews's land in the Matthews-Hardy draft describes Matthews land incorrectly. It incorrectly describes 36 feet of Bauer land as part of Matthews land. Besides being incorrect, that conflicts with the county's settlement with the Bauers.

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6. The description in Hardy's redraft of the County's 40 foot right of way is not correct. It describes the right of way as a part of Matthews's 511.26 acres. It is not and never was. The jury's verdict confirmed that.
7. The proposal that Mr. Hardy drafted is worded to eliminate the subordination of Matthews's land ownership to the road's right of way. That is, Hardy has eliminated a standard deed restriction, the primacy of public road easements, and a deed restriction that Matthews specifically agreed to in 1993 in the partition deed he and his sister signed.
8. Mr. Hardy took paragraph 5 out of Mr. Bass's proposal. Paragraph 5 had made it clear that if a party, like Matthews, violates the settlement agreement, the County can still sue him over his breach of the settlement agreement. That is standard in virtually every settlement. That is now out. Mr. Hardy also took out Matthews's obligation to indemnify the County for his breaches, and for those acting on his behalf.
9. The proposed Agreed Partial Judgment is arguably or could become a legally prohibited collateral attack on the existing judgment of the 25th District Court in Case No. 24,096 and on the signed existing Partial Judgment of that court in Case No 24,096A.

Duncan Ranch has not presented the many documents and photos and existing sworn testimony that backs up what Duncan Ranch is saying in this presentation. We can, if given about a week, assemble all the pertinent documents and photos and testimony that proves what we have said in this filing. If requested by this court, Duncan Ranch can and will file all that with the Commissioners Court. It has already been admitted into evidence by the District Court.

What Duncan Ranch proposes, however, is that this Court consider the position of the party that has been an ally of the County in this litigation, that settled with the County and which has won at every stage, the party that has proven its case to a jury of 12 Colorado County citizens and to the District Judge.

Duncan Ranch asks this court to reject the position of the man who sued your county by swearing under oath the falsehood that he had a private road on County Road 79.

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That false lawsuit has created 5 years of legal disputes. That false lawsuit caused Alleyton to spend approximately \$2.4 Million Dollars to buy land and build an alternate road on that land so they could perform their contract with Duncan Ranch. That lawsuit has caused the County, Duncan Ranch, Alleyton and the Bauers and the Matthews and Careys to incur attorneys' fees in substantial sums. Carey had spent over \$300,000 and owed about \$36,000 in attorneys' fees and expenses before the trial. Likely the trial and preparation for the trial added another \$75,000 to \$100,000 to her fee obligation.

Mr. Matthews's false lawsuit's handling also violated the local rules of the District Court. His lawyer appeared before the District Judge on February 9, 2015, the day he filed his lawsuit, without giving any notice to the County or its counsel, as required by those local rules and as is standard in virtually every district court in Texas.

Matthews's false suit has created enmity, other defamatory and false allegations and anguish. Matthews testified under oath that he authorized and ratified everything his daughter did. What she did included bringing totally false, as established by the Texas Rangers, criminal allegations against three of the members of this Commissioners Court.

Mr. Matthews demands this Court give in to what he tried to do but lost because of the baselessness of his claims. Mr. Matthews has done nothing to deserve the consideration of this Court and has done a great deal to justify this Court's rejection of his proposal.

Rejecting his proposal does not mean the 40 foot road right of way adjacent to Matthews will not be established. Duncan Ranch's next legal step is to file pleadings in District Court to establish as a matter of law the current 40 foot right of way, without the future restrictions Matthews demands, with no injunction against the County and to establish the location of the road adjacent to Matthews's land, and that it is a First Class Road of this County. That gives the County flexibility to meet any future need, if one should arise, to widen the road as needed and as permitted by law. Duncan Ranch also intends to seek a specific order to remove the signs, posts and cameras from the 40 foot right of way now and forever.

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Duncan Ranch may have other objections and reserves the right to make further objections at the Commissioners Court meeting and thereafter and later in District Court if the County agrees to this proposal, including to the currently proposed Hardy-Matthews Agreed Partial Judgment.

Prayer

Duncan Ranch prays this Court reject entirely the proposed settlement agreement as drafted by Mr. Hardy and the current version of the proposed Agreed Partial Judgment.

In the alternative, Duncan Ranch asks this court to defer voting on this matter until Duncan Ranch has had a full opportunity to fully address this proposal at a subsequent hearing and to submit documentary and photographic and testamentary evidence.

Duncan Ranch also prays this Court postpone a vote to give Duncan Ranch the opportunity, (which will take some time, but little, if any, expense to the County), to get a judicial determination and enforceable court order from the District Court regarding the width, status, condition and exact location of the road and Matthews's north boundary and the removal, forever, of obstructions from the road's right of way.


Respectfully submitted,

 Date: 10/22/2019

Eliot P. Tucker, Counsel for I.V. Duncan Ranch LP LLP

Certificate of Service

I, Eliot P. Tucker, certify that this pleading was finally completed and was filed in the Colorado County Commissioner's Court on October 22, 2019 and a copy was hand delivered or emailed to counsel for Matthews and the Careys and to Counsel for the County prior to the Court's meeting.

 Date: 10/22/2019

Eliot P. Tucker, Counsel for I.V. Duncan Ranch LP LLP

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Public Participation Form

Name (please print) Christopher Harch

Which agenda item do you wish to address? _____

In general, are you for or against this agenda item? For Against

Christopher Harch
Signature

Note: This form must be presented to the County Clerk (or assistant) prior to the time that the agenda item you wish to address is discussed before the Court.

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 4. Adjourn.

Motion by Judge Prause to adjourn; seconded by Commissioner Wessels.

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Minutes were taken and prepared by Kimberly Menke, County Clerk on the 22nd day of October, 2019 with Judge Ty Prause presiding.

I, KIMBERLY MENKE, COUNTY CLERK AND EX-OFFICIO OF THE COMMISSIONERS COURT IN AND FOR COLORADO COUNTY, TEXAS do hereby certify that the foregoing is a true and correct copy of the minutes of the Commissioner Court in session on the 22nd day of October, 2019.

Given under my hand and official seal of office this date October 22, 2019.

