



BOARD OF COUNTY COMMISSIONERS  
OF RIO BLANCO COUNTY, COLORADO  
RIO BLANCO COUNTY HISTORIC COURTHOUSE

This meeting will be streamed live on the RBC YouTube Channel:  
[https://www.youtube.com/channel/UCBicnhlMpB47tzL\\_NjN0FIg](https://www.youtube.com/channel/UCBicnhlMpB47tzL_NjN0FIg)

To provide public input please call (970) 878-9432

**Tentative Agenda June 23, 2021**

***Public Comment:** Any member of the public may address the Board on matters which are within the jurisdiction of the Board. If you are addressing the Board regarding a matter listed on the Agenda, you are requested to make your comments when the Board takes that matter. Please limit your comments to three minutes per member or five minutes per group. The public comment time is not for questions and answers. It is your time to express your views.*

**1. 8:00 A.M. Call to order:**

- A. Pledge of Allegiance
- B. Changes to June 23, 2021 Agenda
- C. Move to approve the June 23, 2021 Agenda including any changes

**2. BUSINESS**

A. Discussion of legal advice received from Todd M. Starr, regarding the handling and/or release of particular executive sessions and hostile work environment claims and authorization to act on either matter as directed.

**Adjourn**

*The agenda is provided for informational purposes only; all times are approximate. Agenda items will normally be considered in the order they appear on the agenda. However, the Board may alter the Agenda, take breaks during the meeting, work through the noon hour and even continue an item for a future meeting date. The Board, while in session, may consider other items that are brought before it. Scheduled items may be continued if the Board is unable to complete the Agenda as scheduled.*

*The next regular Board meeting is tentatively scheduled for July 13, 2021, in the Rio Blanco County Historic Courthouse, 555 Main St., 3rd Floor Hearing Room, Meeker, CO. Please check the County's website for more information at: <https://www.rbc.us/129/Agendas-Minutes>*

*If you need special accommodations, please call 970-878-9431 in advance of the meeting so that reasonable accommodations may be made.*



P.O. Box 2560  
Pagosa Springs, CO 81147

**TODD M. STARR**  
tstarr@cunninghamswaim.com

Phone: 970.749.0807  
Facsimile: 214.613.1163

June 22, 2021

Commissioners Rector and Gates,

Certainly, this round of the recall directed against Commissioner Moyer has put a spotlight on past county meetings. I wanted to take this opportunity to share with you my best advice and counsel, legal and otherwise.

**Exclusion of Gary Moyer**

Please note that I have excluded Commissioner Moyer as a recipient of this communication. I believe he has a clear and direct conflict of interest and that his involvement will only tarnish any decisions you make.

**Past Executive Sessions**

This category of meetings can be further divided into two classes: 1) those which David Morlan recorded, and the county still has possession of the official recording of the executive session; and 2) those which Dave Morlan recorded and for which the county no longer has the official recording

Those which David Morlan recorded, and the county still has possession of the official recording

This class of meeting is further broken into two subsections: 1) those meetings which Morlan recorded with the permission of the BoCC; and, 2) those meetings which Morlan recorded without the BoCC's permission.

In my opinion, the first, recorded by Morlan with the board permission no longer retain the privilege of executive session. I believe the law is clear that any variation from the statute which prescribes a specific manner of recording, results in an improperly convened executive session. There can be no such thing as an improperly convened executive session because once it is improperly convened it becomes a public meeting. Therefore, the records, including the audio recording in possession of the county should be released.

Those meetings recorded by Morlan without BoCC permission are a different matter. If Mr. Morlan is in possession of a tape recording of an executive session that the board did not authorize him to record; then, he is in violation of the law and the matter should be referred to the sheriff's office.

To be clear, I have no evidence of, nor am I suggesting that Mr. Morlan did in fact record any sessions absent the board's approval. There were at least two executive sessions that involved just the board and Mr. Morlan (and perhaps another county employee), even I was excluded. I have listened to the official record of one of those meetings and Morlan asked for and the board granted him permission to record the meeting. The fact that he asked on those two occasions is evidence that if he has any recordings, it is with the BoCC's consent.

Those which Dave Morlan recorded and for which the county no longer has the official recording.

Regardless of whether the recording was permissive, the Board has the option to declare the meeting open, subject to the employees (or former employees) waiving their rights. Thus, I believe if the employee(s) consented, and the BoCC so authorized, the tapes could be made public and the content of discussion within the sessions could be made subject of debate.

### Number of Executive Sessions

I am also aware the sheer number of executive sessions appears to have increased. I don't know. I don't track that information because nowhere in the law is a Board limited to a certain number. I believe there are any number of factors that may have resulted in an appearance of an increase of executive sessions. First, RBC does not have a County Administrator. "...[M]eetings involving the "day-to-day oversight of property or supervision of employees by county commissioners" are exempt from the notice requirement. § 24-6-402(2)(f)". *Arkansas Valley Publ'g Co. v. Lake Cty. Bd. of Cty. Commissioners*, 2015 COA 100, ¶ 11, 369 P.3d 725, 726-27. Perhaps we more closely followed the pattern laid out by the above cited case than previous boards actually resulting in stricter compliance with the Colorado Sunshine Act but the appearance of less transparency. Again, I don't know, nor does it matter. What matters is in my opinion each executive session stands on its merits. Secondly, the number of issues we were addressing should be considered as well: i) 2 Utah Gas appeals (and our strategies prevailed.), ii) Chevron negotiations and subsequent lawsuit, iii) Strata negotiations and subsequent lawsuit. These are just. Those issues that are unquestionably cause for multiple executive sessions for each issue. However, again, the BoCC often, out of an abundance of compliance, convened executive sessions to address day – to – day oversight issues. And, when managing a \$30 million dollar public corporation, there are a lot of day to day oversight issues.

### Hostile environment

One consequence of the recall that I believe requires your attention is that you now have multiple former employees who have made public statements claiming the county to be a hostile work environment. Although, there is no record of any of these director level and above employees ever filing a complaint with Human Resources specifically alleging a hostile work environment. What's more during my tenure, the board was never presented with any evidence of the claim of hostile work environment consistent with the personnel policies and the law.

Nonetheless I believe you should take reasonable steps to protect the county to include engaging an outside firm such as Employers Counsel to investigate these claims. I suggest this knowing it is going to be outrageously expensive because it allows us to position the county defending any future claim made by truthfully asserting that you have taken reasonable action to investigate in an independent way whether or not any management or managerial corrections need to be made in order to ensure the organization does not run afoul of the law. To simply ignore the claims,

despite the overwhelming evidence to the contrary I believe, place is the county in a reactive position instead of a proactive position towards compliance.

As always, I can be available to discuss this at your convenience.

Sincerely,



Todd M. Starr, Esq.