
The COLORADO INDEPENDENT

The

Colorado Independent

Greene: Gaiter censors public comment in Larimer County

By
Susan Greene

-
October 27, 2017



Anyone who has sat through more than a few local government meetings knows that elected officials hear some crazy talk during their open comment periods.

Most county commissions and city councils set aside time in their regular meetings as a sort of open-mike session during which members of public typically announce events, laud scout troops for earning their public service badges, or otherwise speak their minds. In nearly three decades as a political reporter, I've seen these sessions become forums for UFO watchers to report alien sightings, a woman to berate a city staffer for allegedly sleeping with her husband, and a man who'd show up to lob weekly F-bombs at county commissioners for putting fluoride in the water supply.

You might have thought that Larimer County commissioners were trying to avoid that kind of free-for-all last week when they set rules at a public meeting prohibiting speakers from uttering specific words. But the two words they banned aren't exactly in the crazy-talk lexicon. In fact, they happen to be essential to discussing one of the biggest land-use controversies in the northern Colorado county this year: A pipeline the city of Thornton wants to build that would draw water from the Poudre River – to which that growing city has long-held rights – and move it southward.

Hundreds of Larimer County residents are spun up about the path the pipeline might take and how it could affect their properties. They've gathered 369 signatures on a petition to stop the project from being built in a residential area along Douglas Road. Environmentalists, for their part, want the city of Thornton to keep its Poudre water flowing farther downstream before diverting it into a pipeline.

My interest in the Oct. 17th meeting has nothing to do with the merits of the pipeline project. Rather, I'm struck by the way the commission handled the public comment period at which about two dozen members of the public had signed up to speak.

"So, with a small army here for public comment.... I'm going to say something which is going to upset a lot of you," Chairman Lew Gaiter told the group.

Gaiter listed the commission's usual rules, including limiting comments to three minutes, not swearing or insulting people, and generally being "courteous and respectful." Then he made up a new one.

"The first time I hear the word '*pipeline*' or '*Thornton*,' you're done. I'll cut you off mid-sentence. Is that clear?" he can be heard saying in [an audio recording of the meeting](#).

The pack of would-be speakers was flummoxed. They had been told they'd be able to voice their concerns and ask questions during the commission's open comment period. That's why so many of them – 50 by the county's count, or 75-100 by others' count – had showed up that morning to a board chamber where commissioners are used to hearing from three or four commenters per meeting, at the most.

"I guess I'm pretty naive about government processes," County resident Martha Conant told me this week after being rebuked at last week's meeting. "I'm outraged that this project appears to be happening with no transparency, no input."

"I don't speak at very many meetings. But this is an issue I feel very strongly about," added Georgia Locker, one of the advocates who'd come to voice concerns about the project's impact on the Poudre. "I wasn't very happy... about (being) squelched. Isn't it their job to listen?"

Apparently, not, as Larimer County Attorney Jeannine Haag tells it.

Haag says that because Thornton hasn't yet filed its formal application to build the pipeline in the county, commissioners need to avoid even the appearance of a hearing about the project for fear that speakers' comments could "taint their decision" on whether to approve it once the application comes in. In the meantime, she says, merely listening to the public's concerns could be construed by Thornton as "ex-parte communications" and could open the commission to

the risk of a lawsuit. Haag was the one who urged Gaiter to silence public comments about the project out of what she called “an abundance of caution.”

Gaiter took her advice so literally that he censored two words that most folks would agree are pretty unobjectionable. Avoiding “pipeline” and “Thornton,” he told the crowd, will enable the commission to be fair and unbiased when voting on the project, as anticipated this winter.

Gaiter, as it happens, is one of eight Republicans running for governor. He said he should be lauded, not criticized, for insisting on procedural caution and maintaining what he and Haag call “decorum” at last week’s meeting.

“We know people want us to shut this pipeline proposal down. So (by) not allowing those words, I’m actually protecting their right not to have it forced on us because someone could make an argument that we didn’t follow the right procedure in our decision-making” he said. “Really, this is in the best interest of the people who signed up to speak.”

Colorado’s open meetings law is silent about local governments’ ability to limit public comments or the topics they’re about. Gaiter noted that some city councils and county commissions in Colorado don’t open their meetings for input at all.

But for those who do, legal experts and civil libertarians say officials can’t pick and choose which words are acceptable and which aren’t.

“When the county commissioners hold a public comment session, they open a forum for expression, and the First Amendment applies to any restrictions on expression in that forum,” says Mark Silverstein, legal director at the ACLU of Colorado. “Forbidding comments that include two perfectly acceptable words that are directly relevant to a subject that will come before the board is hardly a reasonable restriction of expression.”

“You can’t just add new areas of banning public speech at a public meeting,” added Luis Toro, director of Colorado Ethics Watch. “The county commission should have taken their lumps and heard the people out.”

In an interview earlier this week, Gaiter defended his word ban, saying, “I’m sure you’re aware that you can’t yell fire in a public theater.”

There was a long pause in our conversation before we both agreed that, as words go, “pipeline” and “Thornton” don’t pack quite the same punch as “fire.”

“If you can show me in the First Amendment that anybody can come to anybody else’s meeting and say whatever they want to say, I’d be interested in that wording,” he told me, then pulled up the First Amendment to read aloud over the phone.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

“Exactly,” I said, pointing out that the people who signed up to speak had peacefully assembled in hopes of expressing their grievances when he shut them down.

“Are you saying I have the freedom to walk into your editorial board meeting at *The Colorado Independent* to say whatever I like?” he asked.

No, I said. We’re not the government. But your county commission is.

By this point, my interview with Gaiter had morphed into something between a civics lesson and a debate. He was a great sport. If he’s elected, I asked, should Coloradans expect he’d continue banning words from public discourse?

“Look, in eight years on the commission, I think this is the first time I’ve ever asked people not to use specific words. My style is to let people talk. But with decorum. ... I don’t want people to think our process is a joke,” he said. “One of the things I learned when I got this job eight years ago is that... managing an open public process effectively is harder than it looks.”

Where, I asked Gaiter, does he draw the line between allowing free speech and running an “effective” government? Isn’t a county commission’s responsibility as much to listen to the public as it is to avoid the appearance of listening to the public more than a land-use applicant might like?

“My intent was not to censor people. So maybe I picked a poor choice of words in doing that,” he said, followed by a long sigh.

“When I have my citizen meetings, which I’ll plan to do as governor, I’m there to listen. For me, I really am on the side of individual rights. That’s who I am – all about the Constitution.”

The commission won’t be holding a public hearing specifically about the pipeline plan until after Thornton submits its formal application, which is expected in January or February.

Photo courtesy of Lew Gaiter for Governor campaign.