

The Board of County Commissioners met in regular session on July 14, 2020. Those present for the session were, Don Batchelder, Chair; Ben Tisdell, Vice-Chair; John E. Peters, Commissioner Member; Connie Hunt, County Administrator; Carol Viner, County Attorney; and Hannah Hollenbeck, Deputy Clerk of the Board.

- **Note – This meeting was recorded for reference purposes. The meeting was conducted virtually and in person pursuant to Resolution 2020-007 Setting Forth a Virtual Meeting Policy During a Local Disaster Emergency.**

A. 9:00 Call to the Public:

The "Call to the Public" agenda item is a time when the public may bring forth items of interest or concern. No formal action may be taken on these items during this time due to the open meeting law provision; however, they may be placed on a future posted agenda if action is required.

Ballot Questions and MS Support Marijuana Cultivation Facility

George Kerber, County Road 22 resident, was present regarding two items.

First, he asked the Board to inform the citizens of what they planned to ask on the November ballot.

Kerber next addressed the MS Support Marijuana Cultivation Facility. He said that he was not against recreational marijuana, but that he did not want a cultivation facility present in his residential neighborhood. Kerber recalled that the attorney for MS Support had agreed to place an additional condition on the license stipulating that they would not apply for a Tier 2 cultivation license or request a major modification of premises to increase the grow area. Kerber assumed that the application for major modification was approved due to that assurance. He said that the Board had repeatedly discussed ways to ensure the limitation could not be changed by future Boards. Despite this discussion, Kerber said that Resolution 2020-023 did not create any limits on future expansion for the current or future owners. Additionally, nothing existed to prevent the Board from overriding the resolution.

Kerber recalled that he had predicted that odor from the facility would be an issue during a 2016 Board meeting. He claimed to have not personally experienced any odor at his residence; however, others that lived on Melody Lane had claimed to experience odor. Kerber said that he fully expected that odor would continue to be an issue given the facility expansion.

Kerber also recalled that he predicted that the 5,000 square foot greenhouse that was constructed for the purpose of ginseng, hemp, or bamboo would eventually be utilized for marijuana cultivation. He predicted that MS Support would come back to the Board for approval to build out the remaining 2,500 square feet for marijuana cultivation.

Kerber requested that the Board amend the Resolution, or consider another action to ensure the prohibition on expansion for the purpose of marijuana cultivation.

Commissioner Batchelder addressed Kerber's question regarding the ballot question. He said that there was currently no ballot question under consideration by the Board; he said that the letter of intent and Election Services Agreement were simply placeholders in the event that the Board agreed to pursue something.

The Board agreed to discuss Kerber's requests when they were scheduled on the agenda.

J. 9:09 General Business:

1. Request for approval of warrants:

M/S/P – Motion was made by Commissioner Tisdell and seconded by Commissioner Peters to approve and authorize Chair's signature on the warrants as presented.

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdell voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

2. Request for approval of the following minutes:

a. May 26, 2020 Regular Meeting:

b. June 2, 2020 Special Meeting:

d. June 16, 2020 Special Meeting:

M/S/P – Motion was made by Commissioner Tisdell and seconded by Commissioner Peters to approve the May 26, 2020 Regular Meeting minutes; the June 2, 2020 Special Meeting Minutes, and the June 16, 2020 Special Meeting Minutes, as presented.

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdell voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.



c. June 9, 2020 Regular Meeting:

The Board requested amendments and agreed to include the minutes on a future meeting agenda.

3. Request for approval and authorization of Chair's signature on Letter of Intent to place a ballot question on the General Election Ballot:

Commissioner Tisdel agreed and noted that there were certain deadlines that required the Board to consider the letter of intent. He said that the Board had preliminarily discussed a question regarding the Gallagher Amendment and stabilizing revenue.

Commissioner Batchelder reiterated that the letter of intent was a placeholder; the Board needed to have further discussions to understand the legislative direction.

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on Letter of Intent to place a ballot question on the General Election Ballot.

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

4. Request for approval and authorization of Chair's signature on Opt-in Letter for the CARES ACT Funding submittal on the Department of Local Affairs (DOLA) portal: (Ratification)

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to ratify approval and authorization of Chair's signature on Opt-in Letter for the CARES Act Funding submittal on the Department of Local Affairs (DOLA) portal.

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

5. Request for approval of agency distribution corrections to the Intergovernmental Agreement (IGA) related to Distribution of CARES ACT Funds between Ouray County, City of Ouray and the Town of Ridgway: (Ratification)

Hunt said that the amendment corrected a minor error in the amounts.

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to ratify approval of agency distribution corrections to the Intergovernmental Agreement (IGA) related to Distribution of CARES Act Funds between Ouray County, City of Ouray and the Town of Ridgway.

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

6. Review and acceptance of June 2020 Public Trustee Report:

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to accept the June 2020 Public Trustee Report.

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

7. CCI Legislative Updates:

Commissioner Tisdel would provide an update at a future meeting.

C. 9:22 Road and Bridge Reports:

Bill "Frowny" Frownfelter, Interim Road and Bridge Superintendent, was present.

1. Road and Bridge Report:

Frownfelter presented the monthly report.

The Board discussed the work associated the various broadband project on County Road 1. The Board directed the Road Inspector to ensure that trenching and compacting was done to County specifications. The Board discussed the maintenance priorities for July, including chip sealing on County Road 1.

2. Request for approval an authorization of Chair's signature on Road Maintenance Agreement between Ouray County and Red Mountain Trust, LLC regarding CR 20A:

Michael Hockersmith, representing Red Mountain Trust, LLC, was present.

Hunt explained that the United States Forest Service (USFS) was aware of the application; she said that the applicant was aware they needed to obtain the requisite USFS permit.

Commissioner Tisdel requested that Section 1(b) be amended to set specific dates ranges for winter maintenance versus summer maintenance. He thought it was reasonable to set May 1 – November 1 as summer maintenance. The Board agreed to amend the Section 1(a) to state: "The Company may conduct the initial plowing of snow on the Road Section, which typically occurs in the first two weeks of May each year, *but not prior to May 1 of each year and not prior to the County authorizing said initial snow plowing,*" and Section 1(b) to state: "Said maintenance shall cease upon a determination by the County that the Road Section shall be closed to vehicular traffic to snow accumulations, *or on November 1 of each year, whichever occurs first.*"

Commissioner Tisdel asked about the ownership structure. Hockersmith explained that Red Mountain Trust, LLC owned the property but that a subcontractor would be hired to perform the maintenance, pursuant to Section 1(c).

Commissioner Tisdel asked if there were any portions of the road where avalanche paths were a concern. Hockersmith said that the agreement included an acknowledgement of the danger, but said that the likelihood of an avalanche impacting this portion of road was unlikely.

Commissioner Tisdel said that the typical term for a winter maintenance agreement was one year; the agreement proposed a five year term. He said that an annual review allowed the County to address any concerns that may arise over the course of term. The Board agreed to amend the term to expire on November 1, 2021.

The Board discussed the bond amount and ultimately agreed that a \$1,000 bond was adequate for the portion of road.

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on Road Maintenance Agreement between Ouray County and Red Mountain Trust, LLC, regarding CR 20A, with the amendments as discussed, conditioned upon review and acceptance by the County Administrator, County Attorney, and the Interim Road and Bridge Superintendent.*

A roll call vote was taken on the motion with the following results:

*Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.*

There was no discussion. Motion passed unanimously.

3. Request for approval of First Amendment to the Intergovernmental Agreement and Memorandum of Understanding between Ouray County and Montrose County for Public Road Maintenance concerning Dave Wood Road:

Commissioner Tisdel said that the maintenance and cost was more than the Board had anticipated. Hunt said that the proposal was a good compromise and felt confident that the extra amount could be handled by the Road and Bridge Department budget.

Commissioner Peters agreed that the amount was higher, but that it was a much bigger burden for Ouray County to maintain that section of road. Commissioner Tisdel agreed that the proposal struck a good balance between Montrose County and Ouray County's road standards.

Frownfelter said that the proposal would allow for the worst sections to be repaired, and that the remaining mileage could be reviewed for future repairs.

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on First Amendment to the Intergovernmental Agreement and Memorandum of Understanding between Ouray County and Montrose County for Public Road Maintenance concerning Dave Wood Road.*

A roll call vote was taken on the motion with the following results:

*Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.*

There was no discussion. Motion passed unanimously.

4. Request for approval and authorization of Chair's signature on Intergovernmental Agreement (IGA) between Montrose County and Ouray

County for Equipment Loan for Chip Seal Work on Ouray County Road 1 (CR-1):

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on Intergovernmental Agreement (IGA) between Montrose County and Ouray County for Equipment Loan for Chip Seal Work on Ouray County Road 1 (CR-1).

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

5. Request for approval and authorization of Chair's signature on Agreement between Ouray County and Cobitco, Inc. for the purchase of Chip Seal Emulsion for CR 1:

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on Agreement between Ouray County and Cobitco, Inc. for the purchase of Chip Seal Emulsion for CR 1.

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

B. 10:25 The Board of County Commissioners convened as the Board of Social Services to consider the following items:

Carol Friedrich, County Social Services Director, was present.

- 1. Request for approval and authorization of Chair's signature on Purchase of Service Agreement Regional Core Services – Substance Abuse and Additional Family Services with The Center for Mental Health and on the Fiscal Impact Form:**
- 2. Request for approval and authorization of Chair's signature on Purchase of Service Agreement Regional Core Services – Mental Health Services with The Center for Mental Health and on the Fiscal Impact Form:**

Friedrich explained that the Board had previously reviewed and approved the agreements, but that there had been some amendments made after the approval.

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on Purchase of Service Agreement Regional Core Services – Substance Abuse and Additional Family Services with The Center for Mental Health and on the Fiscal Impact Form, and Purchase of Service Agreement Regional Core Services – Mental Health Services with The Center for Mental Health and on the Fiscal Impact Form.

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

D. 10:28 The Board of County Commissioners convened as the Board of Health to consider the following items:

- 1. Public Health Quarterly Update:**

Tanner Kingery, County Public Health Director, was present.

Kingery presented the update.

Kingery highlighted the County's variance request for hot springs and pools, and how it interacted with the Protect Our Neighbors State regulations. Kingery expected notification of whether or not the County's variance was approved soon; he was not overly optimistic as the County as requesting 75% capacity and the State had not approved any variance request for pools over 50%.

Kingery explained that the State was still under the Safer At Home Order, but that counties could apply to be included in the Protect Our Neighbors Order. He said that it considered hospital capacity, contract tracing abilities, surge capacity plans and a number of other points. Kingery said that the County would not qualify based on the ability to provide testing at the barometer that the new Order required. He said that the State lab was very busy, resulting in extremely long times for test results.

Commissioner Batchelder thanked Kingery. He said that he had received some correspondence regarding compliance of the Mask Order. He said that a conversation may need to occur regarding

compliance and enforcement of the Mask Order. Commissioner Peters agreed and noted that feedback from business owners would be helpful. Kingery said that he had received lots of feedback regarding compliance, including some concerns that he needed to review. He was encouraged about the level of voluntary compliance. He said that State public health officials liked to see local orders in place; he applauded the Board for establishing those kinds of protections in Ouray County as it helped reduce disease transmission.

Kingery continued to address testing, school re-opening plans, and other topics to discuss at the next Joint Policy Group Work Session.

E. 10:42 Petition for Abatement / Refund of Taxes:

- 1. Petitioner:** Howard and Hsiu-Chi Alberque
- Location:** Lot 55, Loghill Village Unit 4 aka TBD Pine Drive, Ridgway
- Schedule Number:** R003874

Susie Mayfield, County Assessor, was present. The Petitioner was not present.

Mayfield explained that she denied the request as the sale of the parcel did not take place within the data collection deadline for tax years 2019 and 2020.

Commissioner Tisdel confirmed that Mayfield's recommendation was for the Board to deny the Petitioner's estimate of value of \$130,000 and to uphold the Assessor's valuation. Mayfield confirmed the statement was correct.

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to accept the Assessor's recommendation and uphold the Assessor's valuation for the 2019 tax year, and to deny the Petitioner's estimate of value for Howard and Hsiu-Chi Alberque, Schedule Number R003874.

A roll call vote was taken on the motion with the following results:

- Commissioner Batchelder voted in the affirmative.*
- Commissioner Tisdel voted in the affirmative.*
- Commissioner Peters voted in the affirmative.*

There was no discussion. Motion passed unanimously.

- 2. Petitioner:** Cornerstone Owners Association, Inc.
- Schedule Number:** R006020, R006361, and R005869

Susie Mayfield, County Assessor, was present. The Petitioner was not present.

Mayfield explained that the request was Assessor-initiated due to a mistake in an adjustment realized in 2020.

Brian Fetty, Appraiser, explained that there were a number of changes made to the golf course resulting in a downgrade of classification. He said that 217 acres had been reclassified as open space when it has previously been classified as golf course acreage. Fetty said that the overall result resulted in a decrease of the assessed value. Mayfield stated that the Petitioner had accepted the recommended valuation.

M/S/P – Motion was made by Commissioner Peters and seconded by Commissioner Tisdel to accept the Assessor's recommendation of value for the Cornerstone Owners Association, Inc., Schedule Numbers R006020, R006361 and R005869.

A roll call vote was taken on the motion with the following results:

- Commissioner Batchelder voted in the affirmative.*
- Commissioner Tisdel voted in the affirmative.*
- Commissioner Peters voted in the affirmative.*

There was no discussion. Motion passed unanimously.

F. 10:54 Jason Willis, Colorado AML Program Manager; Trout Unlimited and Brian Briggs, Ouray Silver Mines:

- 1. Atlas Tailings Cleanup project in August:**

Jason Willis, Trout Unlimited, was present.

Willis presented the Atlas Tailings Clean Up project. The Board directed Willis to work with the Ouray County Historical Society, where appropriate, and to ensure proper revegetation in the tailings areas.

G. 11:13 Marti Whitmore – Colorado River Water Update:

Marti Whitmore, Colorado River Water Conservation District (CRWC) Board Member, was present.

Whitmore explained that the CRWC was interested in including a mill levy increase question on the November ballot. She said that the CRWC currently had a .25 mill levy, and was proposing increasing it to .52. She said that the revenue was needed in order to continue to protect the interests of Western Slope water users.

The Board agreed to authorize Whitmore to encourage the CRWC to move forward with including the question on the ballot.

H. 11:22 The Board of County Commissioners convened as the Board of Appeals to consider the following item:

Applicant: Noble Heller

Location: 1048 Pleasant Valley Drive (Lot #1, Pleasant Valley Vista #2)

Request: The applicant is appealing a decision by Land Use Staff to deny an application to construct a solar array outside of the designated building envelope as shown on the plat recorded at Reception Number 163007:

Bryan Sampson, County Associate Planner, was present. Noble Heller, applicant, was also present.

Sampson presented the request. He said that Heller was seeking a permit to construct a solar array outside of the building envelope. He said that staff denied the permit and that Heller was appealing the decision.

Commissioner Peters inquired to know when the property was purchased. Heller said that he purchased the property in 1999.

Commissioner Tisdel clarified that the building permit had been denied due to the location being outside the building envelope. Sampson said that Commissioner Tisdel was correct.

Commissioner Batchelder asked if the array was considered a structure as defined by the Land Use Code. Sampson said that it was.

Commissioner Batchelder invited Heller to make a presentation.

Heller explained that five parcels made up the Pleasant Valley Vista subdivision. He said that a land swap was done with the developer in order to install a relay road for the purpose of accessing utilities that were on the north side of the road. He said that there was a long history of disputes over the area, but ultimately resulted in an agreement that allowed access along a portion of the land. He said that utilities and a driveway were present outside of the building envelope. He argued when the Pleasant Valley Vista subdivision was created there was not a definition for building envelope in the Land Use Code. He said that the only thing that could be relied up on was the cross-hatching graphic that was provided for on the plat.

Commissioner Batchelder said that the Land Use Code prohibited the construction or installation of any structure outside the building envelope.

Commissioner Peters inquired if a driveway could be considered a structure. Sampson said that it was. Commissioner Peters pointed out that the driveway was present within the hatched area.

Commissioner Batchelder asked for public comment; hearing none, the Board continued to deliberation.

Commissioner Batchelder asked Viner if there would be any issues with the Board moving forward with the appeal without amending the plat. Viner said that it could be a plat amendment, but that the covenants needed to be reviewed, as it might define the area in a clearer manner than the plat. She said that the homeowners association (HOA) had not weighed in on the issue and that there were specific statutes that pertained to PUDs.

Commissioner Peters asked if the HOA was notified. Heller said that it was notified, and that the board members had signed a document supporting the installation of the array. He said that he could provide the document. Heller said that the covenants did not address anything regarding lot 1 or the hatched section of the plat but that he could provide the documents.

Heller agreed to provide the documents.

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to continue the item to July 28, 2020 at 1:00PM in order to allow the applicant to provide additional documentation.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.

Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

I. 12:00 Blair and Associates, P.C.:

1. Presentation of Audited Financials:

Pete Blair, Blair and Associates, P.C., was present.

Blair presented the audited financials.

12:16 Lunch:

K. 1:01 The Board of County Commissioners convened as the Local Licensing Authority to consider the following item:

1. Request for adoption of Resolution 2020-023 approving an application for "Major Modification" of premises at an existing marijuana cultivation facility located at 255 Melody Lane and owned by MS Support, LLC: (This application was approved during the June 23, 2020 regular meeting.)

The Board agreed that the intent of Condition 9 was to prohibit any future major modification that would result in an expansion of the cultivation area. The Board agreed that Condition 9 needed to be revised for clarity, it would be included on a future meeting agenda for consideration.

L. 1:12 Commissioner/Administrative Reports:

Connie Hunt, County Administrator, discussed the following:

- 1) **National Forest Sign** - Hunt said that the United States Forest Service (USFS) was proposing to relocate the National Forest sign north of Ouray to a location south of Ouray. The Board had no issues with the change of location.

Commissioner Peters discussed the following:

- 1) **Top of the Pines (TOP) Dark Sky Park Designation** - Commissioner Peters asked if the Board would be willing to consider a letter of support for the TOP property to be considered a Dark Sky Park. The Board agreed.

M. 1:20 The Board of County Commissioners convened into an Executive Session pursuant to C.R.S. 24-6-402(4)(b) and (e) for a conference with the County Attorney to receive legal advice and to determine positions relative to negotiations regarding Ouray District Court, Case 2019CV30000:

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to convene into Executive Session pursuant to C.R.S. 24-6-402(4)(b) and (e) for a conference with the County Attorney to receive legal advice and to determine positions relative to negotiations regarding Ouray District Court Case 2019CV3000.

A roll call vote was taken on the motion with the following results:

*Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.*

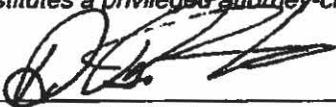
There was no discussion. Motion passed unanimously.

1:27 The Board of County Commissioners convened into Executive Session:

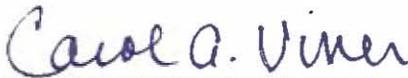
2:30 The Board of County commissioners exited Executive Session:

Commissioner Batchelder stated that the topic did to stray from the matter announced in the motion; no actions were taken and decisions were made.

As County Attorney, it is my opinion that the discussion of the matter announced in the motion to go into executive session constitutes a privileged attorney-client communication.



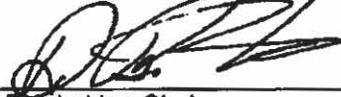
Don Batchelder, Chair



Carol Viner, County Attorney

2:31 The Board of County Commissioners adjourned the regular session.

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO



Don Batchelder, Chair

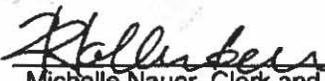


Ben Tisdel, Vice-Chair



John E. Peters, Commissioner Member





Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board