

The Board of County Commissioners met in regular session on October 20, 2003. Those present for the session were Don Batchelder, Chairman; Bill Ferguson, Vice-Chairman; Tom Hollenbeck, Member; Connie I. Hunt, County Administrator, and Linda Munson-Haley, Deputy Clerk of the Board.

- **Note – This meeting was recorded for reference purposes.**

9:30 Chairman Batchelder called this session to order:

A. 9:30 General Business:

1. Request for approval of warrants:

M/S/P—Motion was made by Commissioner Hollenbeck and seconded by Commissioner Ferguson to approve the aforementioned warrants as presented. Motion carried.

2. Request for approval of October 6, 2003 Minutes:

M/S/P—Motion was made by Commissioner Hollenbeck and seconded by Commissioner Ferguson to approve the aforementioned minutes as written. Motion carried.

3. Financial Report through September 2003:

Connie Hunt, County Administrator, presented the Financial Report through the month of September 2003.

Chairman Batchelder had a question regarding EMS revenues. Commissioner Ferguson had a question regarding property tax revenues. Ms. Hunt addressed these questions.

4. Request for approval of 3rd Quarter Budget Amendments:

Connie Hunt, County Administrator, presented the 3rd Quarter Budget Amendments for approval from the Board.

M/S/P—Motion was made by Commissioner Ferguson and seconded by Commissioner Hollenbeck to approve the aforementioned 3rd Quarter Budget Amendments as written. Motion carried.

5. Request for approval of amendments to City/County IGA:

Connie Hunt, County Administrator, requested approval from the Board for amendments to the City/County IGA.

M/S/P—Motion was made by Commissioner Ferguson and seconded by Commissioner Hollenbeck to approve the aforementioned amendments to the City/County IGA as written. Motion carried.

6. Approval of Amendment to Agreement for Construction of Ouray County 4-H Exhibit Hall regarding change of name to Ouray County 4-H Event Center:

M/S/P—Motion was made by Commissioner Hollenbeck and seconded by Commissioner Ferguson to approve the aforementioned “Amendment to Agreement Between Ouray County, Praise Him, LLC, and Simons Construction and Design, LLC for Construction of Ouray County 4-H Exhibit Hall” as written. Motion carried.

B. 9:45 Commissioner/Administrative Reports:

Connie Hunt, County Administrator, had nothing to discuss:

Commissioner Batchelder discussed the following:

- 1) Reported on the dedication ceremonies for the 4-H Events Center scheduled for Wednesday, October 22, 2003 at 6 p.m.

Commissioner Ferguson discussed the following:

- 1) Reminded the Board that he will not be able to attend the Board of County Commissioners Meeting on October 27, 2003.

Commissioner Hollenbeck discussed the following:

- 1) A letter he had received from Tom Jones.
- 2) Informed the Board of a remote possibility that he could be in court on Monday morning, October 27, 2003. Chairman Batchelder suggested letting Ms. Hunt know.

Linda Munson-Haley, Clerk of the Board, had nothing to discuss:

9:55 Chairman Batchelder declared a recess to reconvene this regular session at 10:00:

10:00 Chairman Batchelder reconvened this regular session pursuant to recess:

C. 10:00 Department Heads/Elected Officials Meeting:

Chairman Batchelder opened the meeting with a discussion of the Ouray County Budget for 2004. In summation he indicated that the County is going to be reducing services. One avenue is to close the courthouse one day a month and consequently the employees would be reducing their pay by one day. The elected officials' benefits would be slashed across the board to make it equitable. He asked for other suggestions from those in attendance. The Commissioners suggested putting a ballot question on the ballot next year to fund emergency services and not have to take it out of general fund. Another option would be a mil levy to fund some of the Sheriff's department items. Michelle Olin, County Clerk and Recorder, suggested that the one-day closure be a floating day so that it could be attached to an existing three-day weekend to make it a four-day weekend in order to put a positive spin on a negative situation. There are seven days that would fall into this category. Bob Wolford, County Road Superintendent, suggested that his department could tighten its budget. A discussion followed regarding how to effectively impact the public so that they would be more apt to approve more revenues. Chairman Batchelder reiterated that the County must reduce expenditures, regardless of how it is done. Mr. Moberg suggested doing away with the Planning Commission stipend or reducing it by half. Chairman Batchelder asked Mr. Moberg to discuss this idea of reducing the stipend in half with the Planning Commission and get back to the Board. Mr. Wolford is asked to suggest a cut in his budget for materials to the Road Committee and get back to the Board. The Board will then consider all of these suggestions in their final decision. Ms. Hunt excused herself to attend a software training. Chairman Batchelder pleaded that everyone should look for ways to be efficient. The Board will factor all of these suggestions into a proposal. Given the revenue trends, we need to explore every opportunity for efficiency.

Bob Larson, County Surveyor, discussed the following:

- 1) Bob reported that on finishing the layout of a cul-de-sac.

Michelle Olin, County Clerk and Recorder, discussed the following:

- 1) Ms. Olin reported on preparations for the upcoming election. Early voting began this morning and absentee ballots are starting to come in. Volunteers are needed for an absentee judge (Republican) for about four to five hours on election night to count the absentee ballots, and a canvas board judge (Republican) to audit election results on November 6. Chairman Batchelder and Commissioner Hollenbeck volunteered and Ms. Olin will send them a letter of confirmation.

Steve Svaldi, EMS Director, discussed the following:

- 1) Discussed the status of the Ridgway ambulance and the lease on the ambulance. Chairman Batchelder discussed the Ridgway ambulance location.

Ashley Miller, IT Manager, discussed the following:

- 1) Network security and the new e-mail host with a new domain name as a back up.
- 2) Connection of the 4-H Events Center to the internet.
- 3) She will be talking to each department to get ideas for individual web page design.

Sheriff Mattivi discussed the following:

- 1) Reported on activities of his department.
- 2) He had reports on a credit card scam that the department is looking into.
- 3) He has been working on a couple of grants. He reported that he received a Department of Justice Grant.
- 4) Hired a new deputy.

Greg Moberg, County Planner, discussed the following:

- 1) Working with Ashley Miller on getting new GIS maps done.
- 2) Revenues are looking good.
- 3) Working with the County Attorney on road maintenance impact fees.

Doris Johnson, Chief Deputy Assessor, discussed the following:

- 1) Reported on activities of the Assessor's office.

Allan Gerstle, Director of Social Services, discussed the following:

- 1) Reported that his department will stop taking new applications for the Children's Health Plan as of November 1, 2003 because of budgetary constraints. This is a plan that would benefit children who are not eligible for Medicaid.

Bob Wolford, County Road Superintendent, discussed the following:

- 1) Reported on road issues.
- 2) Asked to set up a road committee meeting with the Commissioners. The meeting was set for October 23, 2003 at 7 p.m.

D. 11:08 Executive Session with County Attorney for the purpose of receiving Legal Advice pursuant to C.R.S. 24-6-402(4)(b):

M/S/P-Motion was made by Commissioner Hollenbeck and seconded by Chairman Batchelder to move into Executive Session pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of receiving legal advice. Motion carried.

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.

Pat Crossley, County Attorney

Don Batchelder, Chairman

The County Attorney requested that the following be present for the Executive Session: Chairman Batchelder; Commissioner Ferguson; Commissioner Hollenbeck; Pat Crossley, County Attorney; Mike Hockersmith; and Linda Munson-Haley, Deputy Clerk of the Board.

11:17 The Board of County Commissioners reconvened into regular session:

E. 11:17 Discussion/Decision regarding Kinder Morgan Special Use Permit:

Applicant:	Kinder Morgan
Request:	Consideration of Special Use Permit to allow the Installation, construction and maintenance of an approximately 25-mile long, 6" diameter, high pressure natural gas pipeline and 60 miles of distribution pipeline in and to the City of Ouray, Town of Ridgway, and the communities of Fairway Pines and Log Hill.

The names of those present for this public hearing are listed in Exhibit A.

Chairman Batchelder stated that he would like to reopen a public hearing and schedule an evening hearing for Monday, October 27, 2003 to allow members of the public who could not attend the hearing held during the day to be present. He asked representatives from Kinder Morgan if they would have any issues with holding another public hearing. Len Mize of Kinder Morgan said that speed is of the essence because they are trying to minimize the impact to the landowners, but that Kinder Morgan wants to give the public a chance to understand all of the issues and be able to ask questions and be satisfied in the process. He stressed that they would like a decision as soon as possible. Chairman Batchelder then asked if any members of the public in attendance would have any issues with a continuation. Bill Dickson, landowner, stated that he does not have a problem with the proposed line as he stated in his letter (Public Exhibit 3), but does have a problem with it going across his property. He was encouraged to attend the public hearing October 27, 2003 to reiterate his stand and objections.

M/S/P-Motion was made by Commissioner Hollenbeck and seconded by Chairman Batchelder to reopen the Public Hearing and to continue the Special Use Permit Hearing to October 27, 2003 at 6 p.m. at the Ouray County Courthouse, to allow more time for public input. Motion carried.

Chairman Batchelder suggested that it might be in Kinder Morgan's best interest to address any issues ahead of time regarding the right-of-way, especially concerning Idlewild.

Len Mize with Kinder Morgan questioned the Board about how quickly after the October 27, 2003 hearing could Kinder Morgan expect a decision. Chairman Batchelder said that the meeting on October 27, 2003 will be a Public Hearing and that, if there are not a lot of other issues raised, a decision could be rendered at that time. Natalie Shelbourn with Kinder Morgan requested to receive any additional information that the Commissioners might have regarding landowners so that Kinder Morgan could follow up with those concerns. Chairman Batchelder cautioned Kinder Morgan to direct any future communications to the County Attorney or Land Use and not to the Commissioners due to the quasi-judicial process.

11:30 Chairman Batchelder declared a recess for lunch to reconvene this regular session at 1:30:

1:30 Chairman Batchelder reconvened this regular session pursuant to recess:

F. 1:30 Milky Way Limited Partnership Special Use Permit Public Hearing:

(Continued from September 8th)

Applicant:	Roland Hinkson
Location:	102 Cutler Creek Drive
Purpose:	Special Use Permit to allow a Christian Center and Temporary Lodging for up to thirty-five (35) people:

The names of those present for this public hearing are listed in Exhibit B.

Chairman Batchelder recapped events from the previous hearing on September 8, 2003. The evidence presented from the Planning Commission was a recommendation for denial specifically for the reason that this use was not a use listed under special use in that zone. The Applicant at that meeting also requested that the Commissioners consider adding this use in that zone pursuant to the provisions listed in Section 2.4 of the Land Use Code. The meeting was continued because of points brought up where the Board needed additional information on zoning of the adjacent property, the Bar-C Chuckwagon; CDOT restrictions; and, most importantly, the wording of the state statute that authorized the care home that discontinued use on November 25, 2001 would be allowed to continue a use or comparable use. He asked for evidence to be presented on the regulation or state statute that set forth the use of the care home. He then asked for testimony relating to the state statute that authorized the use of that facility as a care home and the provisions.

Mr. Hinkson supplied a history of the care center. He and his wife did not initially plan to open a care center, but the State requested the creation of such a facility in Ouray County. According to Mr. Hinkson, the state law says that no county or municipality shall intercede in any way to prevent a person from opening a care center such as they had. He discussed the original authorization for the care home. The care center has been in compliance with all of the building inspections done over the years. He discussed the history of the use as a care center. Everything they did and all of the risks have been in compliance with the laws. What the original code was intended to do was to prevent wholesale abuses of natural environment. He is trying to make a simple sale for the most desirable type of use that would be compatible with the uses of the surrounding area. He asked the Planning Commission to work with them to find a solution for the benefit of the community and for the rights of the owner and buyer.

Chairman Batchelder asked Mr. Hinkson to clarify the state statute he was quoting. Tricia Joy, representative for the Applicant, clarified that it is State Statute 31-23-303, Section 2.

Ms. Joy discussed that the facility was originally licensed for ten people and that the size of the original facility qualified it for sixteen, according to the state inspector. Chairman Batchelder asked Ms. Joy to clarify what the state statute required. She said that the state statute was for the exclusive use of not more than eight people. Ms. Joy asked the Board to look at the reality of this facility and how it has functioned over the years, and to look at this as a unique use. Commissioner Ferguson clarified the point that the statute says up to eight residents in a residential zone, although a facility could pass the inspections and could accommodate more but at that point it would not be exempt from local zoning requirements. Pat Crossley, Ouray County Attorney, concurred. Chairman Batchelder clarified with Ms. Joy that her testimony is a request for listing this as a use under Ouray County Land Use Code (LUC) 2.4, or is it still for the special use as special use currently stands. She explained that the request is for a Special Use Permit and expounded on the confusion surrounding the Applicant's misconception regarding LUC 2.4. Chairman Batchelder, for clarification purposes, asked Ms. Joy if her reference to Section 2.4 did not refer to a specific use, but rather to a process that is at the discretion of the Commissioners to include a use within a zone. Ms. Joy agreed. To clarify further, Chairman Batchelder reiterated that what the Applicant is asking is for this particular use to be included within the special uses in the Valley Zone. Ms. Joy said that they reviewed public testimony and tapes and recognized the concerns of the neighbors. Ms. Joy submitted a one-page document dated October 13, 2003 from Tricia Joy titled, "Special Use Permit: Proposed use as a 'Retreat Center with Lodging,'" a two-page document from Tricia Joy, (no date), titled, "Explanation of Operations and Use" as required per Land Use Code Sec. 5.2 B (3)," and a one-page document from Milky Way Limited Partnership, Petitioner represented by Roland Hinkson dated September 8, 2003, titled, "Request for Land Use Code Amendment, 'Valley Zone' Special Uses" (Applicant's Exhibit 1) to address those concerns. She explained that this included the letter that went to all of the neighbors, specifically those who testified. Ms. Joy detailed the specifics of the testimony labeled Applicant's Exhibit 1. She asked the Commissioners to pay particular attention to the last page, "Request for Land Use Code Amendment," where she reviewed the definitions of three uses that do exist under Special Use Permit and proposed that the care home facility fits within the definition of those. She addressed the public's concern of a use as a hotel/motel. It will not serve tourists and transients, and it will not sell services directly to the consumer. She reiterated Ms. Hearst's envisioned use as a private retreat center.

Keith Zimmerman, neighboring landowner, asked if the speakers who speak at the Christian Center are compensated and if this will be a part of their compensation package. Ms. Joy said that it is likely to be part of their package, but that it is still a private, corporate retreat. Chairman Batchelder clarified that the possibility does not preclude that a speaker would be compensated with lodging, and Ms. Joy agreed.

Ms. Joy presented a copy of the plat, passed in 1990 and amended November 1999, of the Bar-C Chuckwagon. She pointed out that parking restricts the capacity of a facility but does not restrict the use. She referenced her previous twelve-point testimony, specifically items 9, 10 and 12 (Exhibit C from September 8, 2003 Public Hearing). At this point Ms. Joy submitted an "exact transcription" (transcriptionist unknown) of the meeting from September 8 (Applicant's Exhibit 2). Chairman Batchelder clarified that Mr. Hinkson had previously referred to Section 1 of the code in his previous testimony as far as the general purpose of the code. The minutes should reflect that Section 1 was referred to as well as Section 2.

A discussion followed regarding building code standards and Ms. Joy restated that the facility in question was built to a commercial construction standard. Ms. Crossley, County Attorney, asked if the original use of the property was residential and Mr. Hinkson replied in the affirmative. A discussion followed pertaining to criteria in the Uniform Building Code with respect to commercial versus residential.

Commissioner Ferguson spoke to confusion surrounding the reference in Applicant's Exhibit 1 to "use by right." The state statute limits the facility to up to eight clients. Testimony was heard that the facility was built to house ten to twelve residents and met the construction standards, and could have held up to sixteen, twenty or twenty-four and would still have met the appropriate standards. The fact that it could be exempt from a land use code review for less than eight does not necessarily lead to the fact that it could, by right, house up to twenty residents. He is not willing at this point to acknowledge the fact that the existing use of twenty to twenty-four people is a "use by right" under Colorado state statute. His concern is that anyone in a residential unit in the County would have the right to build up to an eight-person care facility and expand it to house twenty-four, which means they are vested in a commercial use and could automatically roll it over to a hotel.

Ms. Joy asked the Board to look at the history of the building. The reality is that the it did operate under a license, it did operate as a non-conforming use, it did operate for 20 years. A discussion followed regarding use by right and the state statute. Mr. Hinkson was inspected annually by the State and was told by the State building inspector that he could have sixteen paying clients if he so desired. Chairman Batchelder stated that unless there was specific County approval given to exceed state limitations, which has not been submitted as evidence, then once the use was discontinued for a period of six months, essentially the only use by right that exists is what the state statute says is a use for eight. Ms. Joy questioned whether the state statute meant to limit the use to eight.

Heather Anderson, neighboring landowner, said that although the County cannot intercede with the opening of a care home, after six months of discontinued use someone else coming in should have to resubmit the application.

Chairman Batchelder clarified that we have an actual regulatory legal situation, which would mean that as it stands right now the property has by State statute a use by right as a care home for eight aged or eight adult mentally disabled, but on a parallel track the actual use has been for more than that for the past few years.

Ms. Joy spoke to the uniqueness of the property and the peculiar suitability for a particular use. She went on to discuss LUC 2.4.A. Chairman Batchelder asked for any further testimony in support or opposition to LUC 2.4.A. There was no response.

She then spoke to LUC 2.4 B and 2.4.C and stated that the facility will not create offensive noise, heat, traffic hazards, etc. any more than other uses permitted in the zone, and used agriculture as an example.

Ms. Joy continued with a discussion of LUC 2.4.D and stated that the requested use was indeed compatible with the permitted uses in the zone. At this point, the County Attorney asked Greg Moberg, County Planner, to define a Bed & Breakfast and a Guest Ranch. Ms. Joy questioned the reference in the Board of County Commissioners Meeting Minutes of July 12, 1999 regarding a variance and a discussion followed pertaining to variances and exemptions.

Chairman Batchelder asked for any further testimony for or against this use being added to Section 2.4 of the Land Use Code.

Keith Zimmerman, landowner, spoke to the fact that if this use is added to 2.4 of the Land Use Code it would be applied county-wide in the Valley Zone. He is concerned that the process to modify or adopt the Land Use Code that allows for public comment is being circumvented and that is not in the public interest. He feels that the Land Use process should be protected.

Chairman Batchelder questioned the County Attorney on procedure for adding a use to the Land Use Code under Section 2.4. He asked if there is no public hearing requirement under 2.4 then is the only evidence that can be considered for this request on adding a use pursuant to 2.4 evidence that has been presented at this meeting, or can the Commissioners consider other evidence. The County Attorney said that it would be an extraordinary measure to amend the code. It is an option, but generally to amend the Land Use Code you have to turn to Section 20 of the Land Use Code. Chairman Batchelder also asked if the Board could consider the Master Plan in making this decision since Section 1 has already been referenced. Ms. Crossley replied in the affirmative.

Ms. Joy addressed a previous comment regarding adding this use under the amendment process. She stated that Section 2.4 clearly is a conflict to Section 20.2. Basically, 2.4 does not give a clear directive to have public testimony. It does not give a clear directive to allow everyone in the zone to review this. It says, "Upon application, or on [your] own initiative, [you] may ...". So the application before you is to consider it, and we ask you to consider it relative to, yes you are looking

at it through the zone, but it could benefit the public and benefit the commissioners that were not on the County Board at the time the 2.4 was used.

Heather Anderson, landowner, spoke to the possible conflict between Section 2.4 and Section 20 of the Land Use Code. She explained that a different use that has such dissimilar aspects, such as in this case, would be appropriate for Section 20 and public comment from those in the Valley Zone.

Chairman Batchelder asked Ms. Joy to clarify her statement about a conflict between Section 2.4 and Section 20.2 or did she say Section 20.

Ms. Joy confirmed that she said Section 20.2.

Ms. Joy addressed the conditions of approval. The Applicant has reapplied to CDOT to assure the safest access possible. An engineer looked at the septic and said that it can be adequately adapted. The third condition of approval is the original staff report requiring a building permit prior to review of the application. She stated that the Applicant could not do a building inspection until a use could be defined.

Chairman Batchelder asked Ms. Joy if the Applicant is asking the Commissioners to, first, rule on the request to add a use pursuant to Section 2.4 of the Land Use Code and, if that is favorable per the Applicant's request, then to rule on the Special Use Permit. If the ruling on Section 2.4 is not as per the Applicant's request, does the Applicant want the County Commissioners to rule on the Special Use Permit as it stands? Ms. Joy asked for a brief recess to confer with her clients.

3:25 Chairman Batchelder declared a recess to reconvene this regular session at 3:30:

3:30 Chairman Batchelder reconvened this regular session pursuant to recess:

Pat Crossley, County Attorney, entered into evidence a letter dated October 9, 2003 from Mildred H. Claremont (Public Exhibit 1).

Chairman Batchelder asked Ms. Joy to proceed. Ms. Joy stated that the Applicant felt that Section 2.4 use is indivisible from the Special Use Permit that is being requested. The uses are identical. If the Commissioners do not grant the use under Section 2.4 then essentially it is a denial of a Special Use Permit.

Chairman Batchelder asked for any further testimony. There was no response. Chairman Batchelder closed the hearing for public comment. The Board requested Pat Crossley, County Attorney to draft Findings of Fact and Decision based upon all of the testimony and evidence presented during this hearing. The Board continued their decision until November 3, 2003.

3:38 Commissioner Batchelder adjourned this regular session:

3:38 Executive Session with County Attorney for the purpose of receiving Legal Advice pursuant to C.R.S. 24-6-402(4)(b):

M/S/P-Motion was made by Commissioner Hollenbeck and seconded by Chairman Batchelder to move into Executive Session pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of receiving legal advice. Motion carried.

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.

Pat Crossley, County Attorney

Don Batchelder, Chairman

Chairman Batchelder requested that the following be present for the Executive Session: Chairman Batchelder; Commissioner Ferguson; Commissioner Hollenbeck; Pat Crossley, County Attorney; Doug Canright, County Building Inspector; and Linda Munson-Haley, Deputy Clerk of the Board.

3:46 The Board of County Commissioners reconvened into regular session and adjourned:

BOARD OF OURAY COUNTY COMMISSIONERS

ATTEST:

Michelle Olin, County Clerk and Recorder

Don Batchelder, Chairman

William Ferguson, Vice Chairman

By: _____
Linda Munson-Haley,
Deputy Clerk of the Board

Tom Hollenbeck, Member