

STATE OF COLORADO )  
 ) ss  
COUNTY OF OURAY )

Resolution No. 2003-056

At a regular meeting of the Board of County Commissioners for Ouray County, Colorado, held at the Ouray County Courthouse, on the 3<sup>rd</sup> day of November, 2003, there were present:

Don Batchelder, Chairperson ; Tom Hollenbeck, Commissioner; and Bill Ferguson, Commissioner

when the following proceedings, among others, were had and done to-wit:

**WHEREAS**, Milky Way Limited Partnership, Applicant, submitted to Ouray County an application for a Special Use Permit to allow the use of the facilities located at 102 Cutler Creek Drive, in Ouray County, Colorado as a supervised shelter for youths (hostel) and for part of a private school, adult training and retreat in the Valley Zone, which was later amended to a request to add 'Retreat Center with Lodging to the list of uses allowed by Special Use Permit within the Valley Zone pursuant to Section 2.4 of the Ouray County Land Use Code ("LUC") and to add the definition of 'Retreat Center with Lodging' to the definitions contained within the LUC, followed by a request to approve the Applicant's request to approve a Special Use Permit for this use pursuant to Section 5.3 of the LUC; and

**WHEREAS**, the Board of County Commissioners has reviewed the request in accordance with Section 5.3 of the Ouray County Land Use Code during regular meetings on September 8, 2003, October 20, 2003 and November 3, 2003 and is ready to take action; and

**WHEREAS**, the Applicant conceded that the initially proposed special use would not be allowed under LUC and the amended special use application was dependent upon the Board of County Commissioner's grant of the request to add 'Retreat Center with Lodging' to the list of uses allowed by special use permit in the Valley Zone.

**NOW, THEREFORE, BE IT RESOLVED**, that in accordance with Section 5.3 of the Ouray County Land Use Code, the Board of County Commissioners of Ouray County do hereby DENY the request to add 'Retreat Center with Lodging' to the list of uses allowed by Special Use Permit within the Valley Zone and to add the definition of this term to the LUC. The request for a special use permit for 'Retreat Center with Lodging' within the Valley Zone is considered moot. The Findings of Fact and Decision attached hereto are hereby adopted and incorporated herein.

Introduced, read and passed this 3<sup>rd</sup> day of November, 2003.

Voting in the affirmative: Don Batchelder, Tom Hollenbeck, and Bill Ferguson

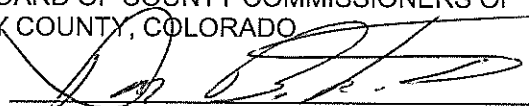
Voting in the negative: None

Abstaining: None

Absent: None

THE BOARD OF COUNTY COMMISSIONERS OF  
OURAY COUNTY, COLORADO

BY:

  
\_\_\_\_\_  
Don Batchelder  
Chairman, Board of County Commissioners



ATTEST: *L. Mon-Hals*

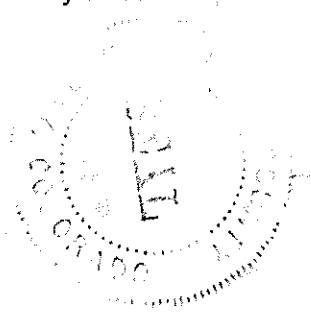
STATE OF COLORADO )  
 )ss.  
COUNTY OF OURAY )

I, Michelle Olin, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the annexed and foregoing Resolution is truly copied from the records of the Proceedings of the Board of County Commissioners for said Ouray County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Ouray, this 3 day of NOVEMBER, A.D. 2002.

Michelle Olin, County Clerk & Recorder

By: *L. Mon-Hals*  
Deputy County Clerk & Recorder



COUNTY OF OURAY, COLORADO  
BOARD OF COUNTY COMMISSIONERS

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**FINDINGS OF FACT AND DECISION**

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In re Special Use Permit Request by Milky Way Limited Partnership at 102 Cutler Creek Drive  
Applicant's Representative: Roland Hinkson

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**Background**

The public hearing on this matter initially came before the Ouray Board of County Commissioners ("BOCC") on September 8, 2003. The public hearing was continued to October 20, 2003. Upon closing of the public hearing, the matter was set for November 3, 2003 for an announcement of the decision to include these Findings of Fact and Decision. Present were: Don Batchelder ("Batchelder"), BOCC Chairperson; Tom Hollenbeck ("Hollenbeck"), Commissioner; and Bill Ferguson ("Ferguson"), Commissioner.



At issue is the request by Milky Way Limited Partnership, the Applicant, for a Special Use Permit for a Retreat Center with Lodging to be located at 102 Cutler Creek Drive in Ouray County, Colorado, which is within Ouray County's Valley Zone. The property consists of 2.213 acres. A main structure that formerly housed the Ponderosa Care Facility and an accessory dwelling exist on the property. The accessory dwelling is subject to three previous variances: 1) one which allowed the accessory dwelling to exist on a parcel of less than 3 acres; 2) a two-unit employee dwelling on the property which exceeds the maximum allowable number of one unit per thirty-five acres; and 3) construction within the required building setback. The request would require the BOCC, in accordance with Section 2.4 of the Ouray County Land Use Code ("LUC"), to add "Retreat Center with Lodging" as a use allowed by Special Use Permit to the Valley Zone in Section 3.4 H (2) of the LUC and addition of the definition of Retreat Center with Lodging to the Definitions contained in Section 22 of the LUC as proposed by the Applicant.

The Applicant's request evolved throughout the process, although lodging has remained a component of the request.

**Summary of Evidence**

**A. Public Hearing before the City and County of Joint Planning Board**

This matter had been previously reviewed by the Ouray Area Joint Planning Board ("OAJPB") on May 21, 2003 and on July 22, 2003. The application for Special Use Permit



stated that Praise Him Ministries, Inc. ("PHM"), the potential buyer of the property, wanted to be able to use the facilities located on the property for "a supervised shelter for youths (hostel) and as part of a private school, adult training, and retreat. The purpose of the school is to provide moral training of youths and instructions for administrators in the ministry of Christianity." The original request was to allow a maximum number of 23 users of the main house, in addition to one couple living on the property, and to allow up to 10 persons to use the accessory dwelling for a total limit of 35 occupants. Information was provided to the OAJPB by various County staff members at the hearing. Paul Christensen, Ouray County Building Official, expressed concerns about the variety of uses of the building and the need to address infrastructure to accommodate these uses to comply with health, fire and building codes. Michael Penny, City Manager for the City of Ouray, stated that he believed that inadequate information had been provided regarding the proposed uses and that more detailed information was needed to determine the potential impacts on wildlife, infrastructure, neighbors, etc. Thus, the City staff could not support approval of the application. Bob Wolford, Ouray County Road & Bridge Superintendent in a memorandum dated May 14, 2003, stated that the proposed change of use would require review by the Colorado Department of Transportation ("CDOT") to determine whether proper access would be provided based upon the use. Doug Canright, Assistant County Planner, prepared a staff report recommending denial of the application due to the lack of sufficient information to prove that the requested special use meets the criteria contained in the review requirements for special uses provided in the LUC, but noted that as the application was presented it did not appear to fit within any of the uses or special uses allowed in the Valley Zone. He noted in a letter dated March 21, 2003 to Mr. Hinkson that a proposed use as a hostel and supervised shelter would have to meet the criteria for a bed and breakfast under the Land Use Code and requested further clarification of the proposed use.

In addition to the County staff member's input, the OAJPB also considered other documentation and testimony. A June 7, 2003 evaluative report prepared by Hart C. Gleason, P.E., indicated that the septic system may not be adequate to serve the facility, basing his calculations on an 18-person maximum capacity, rather than the proposed 35-person capacity facility. He also indicated that he did not have any information as to the specification of the associated leach field, but that it appeared that sufficient acreage was available for a leach field. However, his opinion was based upon having only one septic tank. In contrast, Mr. Hinkson in a memorandum dated May 14, 2003 indicated that there are two 1,250 gallon septic tanks with leach fields on the property and a 10 cubic foot dry well. However, in a May 28, 2003 letter, the County Engineer indicated that a discharge permit would be required since the current onsite

wastewater system (OWS) would be insufficient for a 35-person capacity facility and that no documentation existed to verify the waste water system configuration previously outlined by Mr. Hinkson. The County Engineer expressed concerns that the dry well of the depth described by Mr. Hinkson could present a potential geohazard as it could reach into the groundwater associated with Cutler Creek alluvial debris fan. He opined that since the use appears to be changing to a higher occupancy, the original OWS is most likely undersized.

The OAJPB also considered a letter from CDOT which stated that a 35-foot wide access paved a minimum of 40 feet from the traveled way would be required, possibly along with auxiliary lanes, and that the current 25-foot road easement is inadequate for the proposed special use. The letter requested additional information on the proposed special use to accommodate further evaluation.

At the May 21<sup>st</sup> OAJPB meeting, Mr. Arch Decker, attorney for Victoria Hearst ("Hearst"), addressed various issues. He stated that PHM would restrict the usage from allowing guests to arrive in private automobiles. He further stated that water and sewage disposal should be sufficient and that the proposed use would not affect wildlife and that "no new uses are proposed." Mr. Decker did not present any additional documentation regarding these issues. OAJPB Board Member John Trujillo questioned the adequacy of the septic system based upon his experience as a builder and indicated that it should be carefully evaluated by a professional engineer. In response to questioning, Hearst indicated that the public would not be invited to any events at the facility, but that the facility would be marketed to groups and would not be a walk-in facility. Hearst stated that the facility would be primarily used for lodging for guests, speakers and entertainers, as well as two caretakers. Board Members expressed concerns about the 35-person capacity as being significantly more than the previous capacity and Board Member Staehle pointed out that the BOCC had previously denied a special use permit for the Outward Bound program in a similar setting due to its incompatibility with the residential nature of the area. It was pointed out that the subject property is surrounded by residential property to the north and south and agricultural property to the west. Heather Anderson, a resident of the adjacent Ponderosa Village expressed concerns about the quasi-commercial nature of the proposal and that the proposed special use might become generalized to the whole county. She also expressed concerns about the potential for noise.

At the July 22, 2003 hearing, the OAJPB received additional evidence. Various property owners expressed concerns about the noise that would be generated by the proposed use and the incompatibility with the residential uses adjacent to the subject property. Lincoln Anderson, a nearby property owner, citing incompatibility with surrounding land uses, decrease in property

values, and concerns for safety due to increased traffic on the already busy Highway 550 as the bases for his objection to the proposal, made the analogy that special uses are similar to exemptions and exceptions and should not be commonplace. Jim Nowak, a landowner in the neighboring Ponderosa Village, also stated that he was concerned about the change in the character of the neighborhood if transient troubled youth were allowed to regularly use the facility as proposed. OAJPB Board Members expressed various concerns about the incompatibility of the proposed use with the neighborhood due to the potential for increase in noise and traffic, as well as concerns about the adequacy of the infrastructure. OAJPB Board Member Greene pointed out that the proposed special use would not be allowed under the current Land Use Code.

Based upon the evidence it received at the public hearing, the OAJPB unanimously voted to recommend denial of the proposed use because the use is not permitted in the Valley Zone as a Special Use pursuant to Section 3.4 H (2) of the LUC. Based upon the evidence, the OAJPB further discussed that the proposed use was inappropriate for the property due to the inadequacy of sewer facilities based upon the County Engineer's report for the proposed use; the over-intensive use of the land by the proposed use; incompatibility with the character of surrounding area; and failure to obtain proper access permits from the CDOT. Thus, the proposed special use failed to meet the criteria for approval pursuant to Section 5.3 of the LUC. This recommendation of denial was carried forward to the BOCC.

**B. Public Hearing before the Board of County Commissioners**

At the first hearing before the BOCC on September 8, 2003, the Applicant, through its consultant Tricia Joy, presented a written request in the form of a Memorandum to the BOCC dated September 8, 2003 (labeled as "Exhibit B" in the official Record of Proceedings") to add the following use to uses allowed by Special Use Permit in Section 3.4 H(2) of the LUC along with the following definition to Section 22 of the LUC:

A Retreat Center with Lodging -- A facility where a maximum of 30 people intermittently assemble for a period of quiet seclusion to consider educational purposes, together with its use for short term (approx. two days to one week) congregate housing providing limited food service, and with an on-site residence for Administrative staff providing maintenance and management of the facility for an organization whose purpose it is to provide educational meeting opportunities to groups sharing common

interests. The short term lodging component shall contain no less than five (5) sleeping rooms, and a maximum of fifteen (15); the on-site residence shall contain no more than 4 bedrooms, for a total lodging not to exceed 19 rooms.


To this use and definition, the following was added as a purpose and intent at the October 27, 2003 BOCC hearing:

- It is distinguished from hotel/motel use in that it does not serve 'tourists and transients'.
- A 'private' retreat is distinguished from a 'public' center in that it does not sell services directly to consumers e.g., a 'private residential retreat'.

As part of the proposal to address citizen concerns about increased traffic and parking issues, the Applicant provided a written statement that "[g]roup transportation to the facility will be primarily by multi-person vans, with intent to mitigate automotive impacts on an environment intended for quiet enjoyment" and that "[o]ff-street parking shall be provided according to LUC Section 7.2 M. 'boardinghouse, lodging house or tourist home'; providing one parking space per guest bedroom".

Included in the documentation admitted as evidence into the record at the first BOCC hearing were the following as labeled in the official Record of Proceedings: an Attendance Roster of those attending the hearing on September 8, 2003 ("Exhibit A"); a Memorandum from Tricia Joy to the BOCC dated September 12, 2003 with a 3-page attachment prepared by Roland Hinkson, a 4-page attachment prepared by Tricia Joy, and a 2-page memorandum regarding an amended request ("Exhibit C"); Public Notice of the September 8<sup>th</sup> public hearing demonstrating publication on August 8, 2003 in the Ouray Plaindealer and on August 13, 2003 in the Ridgway Sun ("Exhibit D"); a Memorandum dated August 11, 2003 from Doug Canright to Connie Hunt with an attached packet containing the original application with the applicant's supporting exhibits, all staff reports, and all referral responses, the Applicant's subsequent responses, all relevant Planning Commission minutes and the final Planning Commission resolution ("Hearing Packet").

An official Record of Proceedings from the September 8, 2003 BOCC meeting, including the minutes of this matter (Agenda Item D of the BOCC meeting), were approved by the BOCC on September 15, 2003 and are maintained by the Office of the Ouray County Clerk and Recorder.



At the second BOCC hearing, the following documentation was admitted into the record, labeled as follows in the official Record of Proceedings: Attendance Roster; a letter from Mildred H. Claremont to the BOCC dated October 9, 2003 ("Public Exhibit 1"); a copy of a memorandum from Tricia Joy to Neighbors of (former) Ponderosa Care Home, etc. dated October 13, 2003 ("Applicant's Exhibit 1"); and an unofficial transcription of the September 8<sup>th</sup> BOCC hearing on this matter ("Applicant's Exhibit 2"). An official Record of Proceedings from this BOCC meeting, including the minutes of this matter, were approved by the BOCC on November 3, 2003 and are maintained by the Office of the Ouray County Clerk and Recorder.

At the beginning of the first BOCC hearing, Commissioner Batchelder convened the public hearing on the matter at hand and explained the process. A Hearing Packet was distributed to each Commissioner. Doug Canright, County Building Official, presented an overview of the requested Special Use Permit and explained the Staff's recommendation of denial because the Special Use does not fit any of the uses by right or special uses allowed in the Valley Zone; that the proposed use, with or without a nightly charge, would equal the intense use of a commercial enterprise; and the incompatibility of the proposed use with the surrounding area, recognizing that the Master Plan encourages the location of commercial uses in municipalities or in planned unit developments which allow for commercial uses. He also explained that the OAJPB's unanimous recommendation of denial was based upon the Section 3.4 of the Ouray County Land Use Code, which does not allow the proposed use in the Valley Zone.

Next, Roland Hinkson, who represents Milky Way Limited Partnership (the "Applicant"), read a prepared statement (admitted into evidence as a portion of Exhibit C in the official Record of Proceedings). Mr. Hinkson contended that the requested special use's similarity to the prior use of the property for twenty years and that the existing functional design of the structures located on the property compelled approval of the requested special use. He also stated that he understood that the OAJPB could not have approved the special use without an amendment to the Land Use Code. Thus, he was requesting that the BOCC add a special use, "Retreat Center with Lodging" to Section 2.4 of the Land Use Code. He further stated that he believed that the Added Special Use should be approved not only due to the similarity with the actual prior use, but also that the use was similar to a use by right under C.R.S. 30-28-115 and, therefore, the impacts of the proposed special use, including traffic and infrastructure, would be no more than those of the previous use as a care facility for the elderly.

Greg Moberg, County Planner, advised the BOCC that an amendment to the Land Use Code to add the proposed special use, as amended at this hearing, would not only affect this

site-specific request, but would also have county-wide implications. He explained that the proposed amendment could occur either under Section 2.4 of the LUC or pursuant to Section 20 of the LUC, but that in order to expedite the closing transaction on the subject property, the Applicant's only alternative was to proceed under Section 2.4.

Lincoln Anderson appeared at this hearing, as he had at the OAJPB hearing, and reiterated his objections to the proposed special use. He highlighted discrepancies in previous testimony by the Applicant's representatives regarding the maximum capacity for the previous facility. He believed that Mr. Hinkson had stated that the previous facility had operated with a 16-person maximum occupancy, including the elderly residents and their family members who would occasionally visit. He stated that the proposed use would be a definite change from historic use. It would change from providing long-term residential housing to transient lodgers in increased numbers. This would increase traffic and increase activity and negatively change the character of the neighborhood. He further stated that the purpose of the Land Use Code was to provide stability so that people could make decisions about purchasing property. He also stated that at the August 28<sup>th</sup> meeting of the Ponderosa Village Homeowner's Association, not a single person was in favor of the proposed special use.

Keith Zimmerman, a nearby resident, also presented testimony. He asked for clarification on the Applicant's proposal during the OAJPB hearings of 24-hour on-site staff and a check-in desk at the facility, advertising in magazines so that people could make reservations, and highway signage. He stated that these were indices of a motel, rather than a retreat. He further stated that the Code should be generally followed and that exceptions such as this special use should be granted in rare instances.

Cecilia Zimmerman, a nearby resident, testified that the amended special use requested would still have the negative impact of increased activity and that, from an enforcement perspective, it would be difficult for the County to determine whether the facility was being used as a retreat or a hotel. She and Heather Anderson testified that they remembered statements at the OAJPB hearing regarding the proposed use and that the requested special use had changed considerably.

In response, the Hearst's attorney stated that the amended special use request did not include advertising or a reservations desk at the facility or a treatment facility for kids.

Jane Wakefield, a Ridgway resident, spoke in favor of a retreat being added as a special use because only top-notch people would be using the facility for quiet seclusion and the proposal could increase cultural opportunities.

At the continued hearing on October 20, 2003, additional documentation was admitted into the evidence as described hereinabove. Mr. Hinkson provided additional testimony. He stated that he had originally purchased the structure for a personal residence. It was converted to a care facility operated pursuant to Subsection 2 of C.R.S. 31-23-303, which is still a use by right. He stated that the facility could no longer be used as a residence and if it can't be used for the proposed special use, then it would constitute a taking.

Tricia Joy stated that the facility had previously been allowed to operate accommodating up to 16 residents and that it had been licensed by the State for 10 residents. She further stated that the property had been put to a commercial use for the past 20 years. She then stated that at least 12 people had regularly occupied the facility, including the Mr. and Mrs. Hinkson and maintenance people, and that lodging for guests was also provided at the facility. She introduced an amendment to the proposed special use which the Applicant requests be added to special uses allowed in the Valley Zone. This amendment included the two points as indicated hereinabove. She stated that the new definition fits in between a bed and breakfast, a church, and a guest ranch, which exist as allowed special uses in the Valley Zone. According to Ms. Joy, the proposed use is distinguishable from a hotel/motel because it would not serve transients or sell services directly to consumers. On the other hand, she also stated that reservations would be accepted through the Praise Him Christian Center located in Ridgway, similar to a corporate retreat. Ms. Joy addressed the uniqueness of the property and the peculiar suitability for the proposed use. She further stated that the facility would not create offensive noise, heat, traffic hazards exceeding those created by other uses permitted in the Valley Zone and used agricultural uses as an example.

Keith Zimmerman questioned whether speakers who speak at the Christian Center would be compensated with accommodations at the facility to which Ms. Joy responded affirmatively. Ms. Joy contended that the facility would remain a private, corporate retreat, however. Mr. Zimmerman reiterated his opinion that this request should be processed under Section 20 of the LUC because the request was an expansion of the uses provided by the LUC and the LUC was promulgated in order to provide stability in land use.

Ms. Joy also pointed out that the nearby Bar-C property had a commercial use in accordance with an approved PUD, but that the capacity for events would be restricted due to limitations on overflow parking. Additional information during the discussion on this point indicated that this parking had been limited to 15 days per year, however, and thus, events were of a limited nature. She referenced her twelve-point document admitted as Exhibit C at the previous public hearing on September 8<sup>th</sup>. Ms. Joy requested consideration of the actual use of

the property as it previously operated, she did admit that it was previously operated as a non-conforming use. She stated that a private residence could accommodate as many people as the owners wanted in making a comparison to the impacts of the proposed use. She addressed the conditions of approval and stated that the Applicant had reapplied to CDOT to assure the safety access possible and added that group transportation primarily from the Christian Center in Ridgway would be used to mitigate traffic impacts. Guests would occupy the facility on an intermittent basis according to Ms. Joy. Ms. Joy further stated that noise impacts on the neighboring single-family residences were mitigated by brush located between the subject property and the residences. She addressed signage, stating that it would be limited to the name of the owner, the address, and the word "Private Retreat Center". Ms. Joy said that while no age limit on guests was proposed, that it would be primarily adults. She also stated that an engineer had looked at the septic and said that it could be adequately adapted. The Building Inspection could be conducted after the use was defined. Greg Moberg confirmed this statement, and stated that the inspection assists the public in ascertaining changes in infrastructure and other issues that might be encountered regarding a specific use before expending time and effort in pursuing a particular request. She also stated that the proposed use was consistent with the commercial use allowed at the Bar C and that the overflow parking at the Bar C was restricted to fifteen days per year previously anyway, so that the loss of the overflow parking would not change the previous use, but would just limit capacity. She contends that the proposed special use would act as a buffer between the single-family residences and the Bar C. She stated that the main structure on the subject property was built to commercial construction standards. Ms. Joy concluded her presentation stating that: 1) the impacts of the proposed use would be no greater than those of current uses by right; 2) the proposed use does not change the character of the property from the use that it has had for the past twenty years; 3) that the adjacent property has a commercial use and that the proposed use is similar to other special uses allowed in the Valley Zone; 4) that the proposed use does not have any greater impact than other allowed uses in the Valley Zone; and 5) that the proposed use is compatible with other uses in the Valley Zone, in particular the use of the Bar C.

Doug Canright stated that if the primary dwelling unit is 10,000 square feet as stated by the Applicant, it would be classified as multi-family according to the Uniform Building Code. However, this is for building code purposes only and does not imply that the structure could be used for a multi-family dwelling unit. In addition, Mr. Canright provided documentation to the

BOCC stating that the County not possess any record that the primary dwelling unit has ever been permitted or inspected for compliance with the building code or fire code.

Heather Anderson commented that upon six month's discontinued use, another application would have to be submitted to re-open the care home. She also stated that a use with such dissimilar aspects from allowed uses and special uses would be appropriate for Section 20 review and public comment from residents of the Valley Zone. Keith Zimmerman also stated that the process for allowing public comment is being circumvented by using the Section 2.4 process.

A letter dated October 9, 2003 from Mildred Claremont to the BOCC objecting to the proposal was also admitted into the record. She opined that the site was not the best for the proposed use.

A discussion of variances which were previously granted occurred and it was concluded that the building used as an accessory dwelling could be used only as a care takers unit under the LUC and, thus, a variance would be necessary in order to use this structure for the proposed special use. It was clarified that the request was to consider both buildings as part of the proposed special use.

Also, Tricia Joy clarified that if the request to add the proposed special use under Section 2.4 was denied, it would be also considered a denial of the special use permit application since the two were inextricably intertwined.

The BOCC took the matter under advisement and announced that it would render a decision and written findings on November 3, 2003.

### **Findings of Fact**

1. The special use permit application was submitted pursuant to Section 5 of the Ouray County Land Use Code.

2. In accordance with the decisions in Wilkinson v. Bd., Comm'rs, 872 P.2d 1269 (Colo. App. 1993); C & M Sand & Gravel v. Board of County Commissioners, 673 P.2d 1013 (Colo. App. 1983); South of Second Associates v. Georgetown, 196 Colo, 89, 280 P.2d 807 (1978); and Theobald v. Board of County Commissioners, 644 P.2d 942 (Colo. 1982) the criteria for evaluation of an application for special use permit are sufficient.

3. The Board of County Commissioners finds that all procedural requirements, including but not limited to notice requirements, have been met.

4. Pursuant to Section 2.4 of the LUC, the Applicant requested to add 'Retreat Center with Lodging' to the list of uses allowed by special use permit in the Valley Zone and to add its definition as proposed by the Applicant.

5. The provision allowing the BOCC to add to the uses listed for a zoning district any other similar use which conforms to the conditions as provided in Section 2.4 is limited to obvious oversights and unforeseen circumstances.

6. The absence of 'Retreat Center with Lodging' in the list of uses allowed by special permit in the Valley Zone was not the result of obvious oversight or unforeseen circumstances. The testimony and documentary evidence highlighted controversy and a number of issues regarding the addition of this special use, demonstrating the need to process this request with ample public discussion prior to making an amendment to the Land Use Code.

7. The BOCC received testimony that, in this matter, there was a conflict between Section 2.4 of the Ouray County Land Use Code and Section 20.2 B of the Ouray County Land Use Code in determining whether the request to add 'Retreat Center with Lodging' to the list of uses allowed by special use permit in the Valley Zone pursuant to the procedure provided in Section 2.4 and the procedure provided in Section 20.2 B.

8. To the extent that the provisions of Section 2.4 of the Ouray County Land Use Code conflict with the provisions for Land Use Code Amendments contained in Section 20.2B of the Ouray County Land Use Code in determining which procedure to use to process the request for adding 'Retreat Center with Lodging' to the list of uses allowed by special use permit in the Valley Zone, the requirements of the Code which are more restrictive or impose the higher standards govern in accordance with Section 1.6 of the Ouray County Land Use Code.

9. Because Section 20.2 B of the Ouray County Land Use Code is more restrictive than Section 2.4, Section 20.2 B should be followed to process the request to add 'Retreat Center with Lodging' to the list of uses allowed by special use permit in the Valley Zone.

10. Furthermore, the proposal of the addition of 'Retreat Center with Lodging' to the list of uses allowed by special use permit in the Valley Zone is not appropriate for the following reasons:

a. The proposed amended special use does not meet the goals contained in Sections F-1, F-3, and G-3 of the Master Plan and as such fails to meet the criteria contained in Section 2.4 A of the Ouray County Land Use Code, which provides that "such use is appropriate to the physiographic and general environmental character of the zone to which the use is added"; and

b. The proposed amended special use fails to meet Section 2.4 B of the Ouray County Land use Code in that the proposal would create an alteration beyond other uses by right permitted in the Valley Zone. Also, the proposal would create alteration of the Valley Zone exceeding the minimum amount normally resulting from special uses permitted in the Valley Zone; and

c. The weight of the evidence demonstrates that, as currently defined, a 'Retreat Center with Lodging', would create impacts beyond the uses by right and other uses allowed by special use permit in the Valley Zone such that the proposed special use should be evaluated under Section 20.2 B of the LUC.

d. Other uses of the property are permitted on the subject property in accordance with Section 3.4 H of the LUC and in accordance with Colorado State Statutes.

11. Finally, whereas the proposed special use would be included in the Valley Zone throughout the County and would have county-wide application and where an alternative method of considering the amended special use proposal by the process contained in Section 20.2 B of the Ouray County Land Use Code, the BOCC finds that the health, safety, and welfare of the citizens of Ouray County would be best served by consideration of the proposal pursuant to Section 20.2 B of the Ouray County Land Use Code.

### **Decision**

For the foregoing reasons, the Board of County Commissioners, hereby denies the request to add 'Retreat Center with Lodging' to the list of uses allowed by special use permit in the Valley Zone pursuant to Section 2.4 of the LUC.

In addition, because the Applicant conceded that the initially proposed special use would not be allowed under the Ouray County Land Use Code and the amended special use application was dependent upon the BOCC's grant of the request to add 'Retreat Center with Lodging' to the list of uses allowed by special use permit in the Valley Zone, the request for approval of the amended special use application is considered moot.

DONE and approved this 3 day of NOVEMBER, 2003.

**THE BOARD OF COUNTY COMMISSIONERS OF THE  
COUNTY OF OURAY, COLORADO**

By:

Don Batchelder  
Don Batchelder, Chairperson

ATTEST:

L. M. ...  
Ouray County Deputy Clerk and Recorder

