

The Board of County Commissioners met in regular session on July 11, 2005. Those present for the session were Don Batchelder, Chair; Heidi Albritton, Vice Chair; Kristi Westfall, 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 Commissioner 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 Albritton and seconded by Commissioner Westfall to approve warrants as presented. Connie Hunt asked the Board to approve an additional warrant to supplement an incorrect amount on a presented warrant. Commissioner Albritton had questions on a Fair Board warrant and one for S&S Signs. Ms. Hunt clarified. The motion was amended to approve the warrants with the additional warrant as presented. Motion passed unanimously.

2. Request for approval of Minutes for June 27, 2005 Board of County Commissioner Meeting:

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Batchelder to approve the Minutes for June 27, 2005 as presented. There was no discussion. Motion passed unanimously.

3. Request for disposal of surplus property via **Resolution #2005-041**:

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to adopt Resolution 2005-041 as presented. There was no discussion. Motion passed unanimously.

4. Request for approval of Change Order with the State of Colorado, Department of Health for Bioterrorism Program:

Commissioner Batchelder clarified that there was no obligation to the County.

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the Change Order with the State of Colorado, Department of Health for the Bioterrorism Program as presented. There was no discussion. Motion passed unanimously.

5. Request for approval of letter authorizing the establishment of a bank account for the Loghill Paving District (*ratification*):

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to ratify a letter authorizing the establishment of a bank account for the Loghill Paving District. Commissioner Westfall asked who was on the signature card. Ms. Hunt clarified. There was no further discussion. Motion passed unanimously.

6. Request for approval of State Historical Contract for the County Courthouse:

Commissioner Batchelder provided a brief background noting that this has been an ongoing process for the past eight years.

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the State Historical Contract for the County Courthouse as presented. There was no discussion. Motion passed unanimously.

7. Request for approval of Bureau of Land Management (BLM) Assistance Agreement for Community Wildfire Protection Plan:

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the Bureau of Land Management Assistance Agreement for Community Wildfire Protection Plan as presented. Discussion. Commissioner Batchelder provided some background information. It is the understanding of the Commissioners that by August or September of this year if the County does not have a fire management plan in place and there is a significant fire, the County may not be eligible for federal fire funds. He clarified that the match is for \$2,000. Motion passed unanimously.

8. Discussion and consideration of Habitat for Humanity partnering:

Shary Templeton, Executive Director of the San Miguel Regional Housing Authority and retired State President of Habitat for Humanity of Colorado, requested a meeting with the Ouray County Commissioners to discuss partnering with San Miguel County to start a Habitat Affiliate program. It was the consensus of the Board to meet with Ms. Templeton and Ms. Hunt will contact her to set a date.

9. Provision of San Juan Mountain Guides, LLC, post use report regarding the Ouray Ice Park:

Commissioner Batchelder provided a brief background. When the Ouray Ice Park was first set up the County took the lead role because of insurance considerations. For the first few years, the County spent a lot of time dealing with issues at the Ice Park. Finally, on recommendation of the board that oversees and advises the Commissioners on the Ice Park, the County entered into a concessionaire agreement. This is the fourth and final year of that agreement. One requirement of the agreement is an annual report.

Clint Cook with the San Juan Mountain Guides presented the report and acknowledged that everything is working well. A discussion followed as to credentials for guiding in the Ice Park.

Commissioner Westfall inquired as to what entity certifies the guides.

Mr. Cook replied that the American Mountain Guide Association certifies guides on different levels with a minimum of first aid training. San Juan Mountain Guides carries the liability insurance policy.

Commissioner Batchelder explained that the entities are now looking at beginning the procedures for a new contract noting that it should retain the clause allowing the County to assign oversight of the Park to the City of Ouray because the City is better equipped to do this with sufficient personnel.

10. Appointment of Vice Chair for the Board of County Commissioners:

**M/S/P**—Motion was made by Commissioner Westfall and seconded by Commissioner Batchelder to appoint Commissioner Albritton as Vice Chair of the Board of County Commissioners. There was no discussion. Motion passed unanimously.

**B. 9:45 Discussion and consideration of information technology network connectivity between County buildings and internet:**

Michael Elden, I.T. Manager, was present to discuss networking and the Internet. The recommendation is to go from radio to T1s at this time because DSL is not available in Ridgway. However, DSL is more reliable. A discussion followed on fractionating T1s with other entities such as the City of Ouray and the Town of Ridgway to defray costs.

Cheryl Roberts, Ouray County Public Health Director, asked how this would affect the Emergency Broadcast Information System and a discussion followed.

By consensus of the Board of County Commissioners, staff was instructed to develop a firm proposal to be put into the budget for next year.

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

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

- 1) Working on a grant that will allow for implementation of electronic recording
- 2) A complete conversion rewrite of motor vehicle software will be implemented in September with training courses in August.
- 3) Election update – the new HAVA (Help America Vote Act) compliance system with a dedicated T1 will arrive in November or December and is scheduled to go online in January 2006.
- 4) This November election will include three school district ballots with candidates for school board directors, Dallas Park Cemetery de-Brucing question, and a Montrose fire mill levy increase. There will be nine ballot styles that will require much preparation.
- 5) She received a letter from the Secretary of State's office regarding a request from the federal government. In 2004, the number of people who voted in nineteen counties in the state of Colorado exceeded the number of people the federal census showed lived there. She asked the assembled department heads for help to prove that Ouray is a seasonal community and is experiencing an increase in growth.

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

- 1) The department is slower in the summer because more jobs are available, children are out of school so there is no child welfare school reporting, and eligibility is quieter.

Cheryl Roberts, Public Health Director, discussed the following:

- 1) She is in the process of investigating four tuberculosis cases in the migrant population.
- 2) Three birds were reported and will be collected for possible West Nile Virus but only one can be swabbed.
- 3) There is possible grant money from tobacco through the STEP program
- 4) Tanya has been working on a lease/acquisition of a building for public health
- 5) Still working on VT billing

Greg Moberg, County Planner, discussed the following:

- 1) Increase in open cases for general planning and PUDs – up 100% plus
- 2) Looking at about half a dozen amendments, open lands PUD, and oil and gas
- 3) Building department numbers are interesting with last year at 47 and this year to-date, 60.
- 4) Revenues are up
- 5) Fifteen permits are pending that is putting pressure on the staff
- 6) At the recent Tri-County Meeting he was charged with setting up a meeting with the staff and Road and Bridge departments of the three Counties. The meeting is set for July 19, 2005 at 1 p.m. at the Library Conference Room. He will get notices out.

Kim Mitchell, EMTI and Deputy Chief, discussed the following:

- 1) Received two grants that Jonathan Rice had written for pagers and AEDs (Automated External Device), Four more AEDs have been approved and three are in operation. In order to receive those and the associated monies, the physician adviser must be registered with the State as a physician advisor, which they are working on.
- 2) Found out last week that another grant had been approved for recruitment and retention. Ouray County's proposal was number one in the State beating out 26 other proposals. This will provide for a slide show for recruitment.
- 3) The department has been very busy with 22 ambulance calls since July 1.

Sheriff Mattivi discussed the following:

- 1) Ouray experienced a fairly quiet 4<sup>th</sup> of July this year. Mountain Rescue was called out; they have been called out quite a few times.
- 2) The department received calls regarding several overdue parties
- 3) They are investigating two fraud cases that have been turned over to the DA's office
- 4) Several teenage parties resulted in some enrollments into Juvenile Diversion. One party resulted in an accident.
- 5) There are a couple of land disputes that the Land Use staff is working. Greg Moberg noted that enforcement is getting bigger and they may need to hire an enforcement officer.
- 6) There was one fatal ATV accident that was on private property.

Shelli Banks, Fairgrounds Manager, discussed the following:

- 1) There are 18-20 loads of road base that need to be laid down by R&B.
- 2) The Michael Martin Murphy concert was a success as far as the Fairgrounds was concerned. The Ranching History Museum asked for a \$500 deposit back but she explained that the trash dumping would be about \$500. Commissioner Albritton explained that the County made quite a few concessions to help with the fundraiser. There had been discussions with the fundraisers that there would be other utility costs associated with the event. Commissioner Albritton and Commissioner Westfall agreed that Ms. Banks should keep the money and explain about the additional costs to the Ranching Heritage Museum.
- 3) She recently booked a wedding.
- 4) She has been busy working on proposals for 2006 events.
- 5) She noted that Chris Dobbins had done phenomenal job of finishing out the new addition to the Ouray County 4-H Event Center and wanted the Commissioners to know that he is a huge asset to the Fairgrounds.
- 6) Her weekly work schedule will be erratic for the remainder of the summer because of working weekend events.

Ron Durham, Maintenance Supervisor, discussed the following:

- 1) Busy getting water to the concession stand and getting events set up at the Ouray County 4-H Event Center and Fairgrounds.
- 2) Will be putting in new downspouts at the Ouray County 4-H Event Center this week and running water lines for the sprinkler system.
- 3) There was a problem with the emergency generator at the Courthouse

Sherry Peck, Human Resources Representative, discussed the following:

- 1) Will be holding an orientation for Chris Miller who starts tomorrow as the new Road Superintendent.
- 2) There have been many personnel issues keeping her busy.

Bob Larson, County Surveyor, discussed the following:

- 1) He attended the county surveyors state meeting in Glenwood on Saturday and he discussed plat checking
- 2) Discussion of County boundary line issue with Montrose County. Asked Greg Moberg to keep him apprised of the outcome of the upcoming Tri-County meeting. It is important to make sure that the statutory requirements of the State are recorded on each plat.

Michael Elden, I.T. Manager, discussed the following:

- 1) Will be phasing out the co.ouray.co.us domain in the next six months because the County does not own the domain name. It is owned by the University of Denver. We do have a .gov domain that we are paying for and we will switch to that. He cannot control spam with it located at the current site.
- 2) With the domain change, he will be setting up a new web site
- 3) He will be initiating a new computer usage policy this month
- 4) Will be going to GIS training
- 5) Is researching new software for the Clerk's Office and will be attending meetings on this
- 6) Addressed a question by Commissioner Westfall regarding the loss of data in the Assessor's office when the computers failed.
- 7) Purchased a new backup drive to back up the servers
- 8) Discussed Internet security software
- 9) The recent generator failure illustrated the need to look at better backup power supplies

Ramona Radcliff, County Treasurer, discussed the following:

- 1) The Treasurer's Office collected 91% of the taxes. Delinquent notices went out.

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

Connie Hunt, County Administrator, discussed the following:

- 1) Distributed a memo regarding agenda material for Commissioner packets.

Commissioner Albritton had nothing to discuss:

Commissioner Westfall had nothing to discuss:

Commissioner Batchelder had nothing to discuss:

**11:10 Commissioner Batchelder took a brief recess and reconvened at 11:20:**

**D. 11:20 The Board of County Commissioners convened as the Board of Zoning Adjustment for the following item:**

1. Continuation Public Hearing:  
 Applicant: Ed von Delden  
 Location: 782 Pine Drive, Ridgway, CO 81432  
 Purpose: Appeal of County Notice and Order to remove solar panels constructed without a permit

Commissioner Batchelder reopened the public hearing continued from June 6, 2005 and admitted further testimony in the form of a letter from Carl McClung dated July 7, 2005 (Public Exhibit D-1) and a letter from Richard Wojciechowski dated July 10, 2005 (Public Exhibit D-2).

Ed von Delden, Petitioner, verified that the Commissioners had received his letter dated July 6, 2005 with attachments (Petitioner Exhibit D-1). The Commissioners agreed that they had.

Commissioner Batchelder recapped that at the end of the hearing on June 6, 2005 Jim Kennedy was asked to meet with County officials to inspect Mr. von Delden's lot to determine other possible locations for the solar panels. Commissioner Batchelder asked them to present their reports.

Doug Canright, Planner/Project Manager, reported that he had met with the Log Hill Village Unit IV Architectural Control Committee and identified two sites that the committee would accept as approvable (Memo dated July 6, 2005, County Exhibit D-1).

Jim Kennedy, representing the Log Hill Village Unit IV Architectural Control Committee, concurred that two sites were readily approvable and noted two other potential sites (letter dated July 1, 2005 to Ed von Delden, Public Exhibit D-2). He restated that the ACC, unanimously, would not approve the panels in the current location explaining that the problem is that the panels were put in without the ACC's approval. The code says that homeowners must have ACC approval before getting a building permit. According to him, the intention of the County visual impact ordinance is that there should not be an installation such as the panels on the escarpment. He urged the County Board of Visual Appeals to let them do their job to make aesthetic decisions about what goes on in their community and support the County's Land Use Code. As an aside, he noted that he is in favor of solar energy.

Penny Starr, on behalf of her husband, Frank Starr, who is on the ACC and who could not be present, reiterated that they are totally in support of solar but that this has not been done in a responsible fashion and will be offensive to Ridgway and Eagle Hill.

Sheilah Williams who lives on Ponderosa Drive and attended the meeting, stated that during the winter months the panels will be more reflective as they are in the least offensive position now.

Larry Heeren who resides on Pine and is a member of the ACC, observed that he did not look upon Mr. von Delden's *panels* as a negative thing, but rather the *location* of the panels. He spoke to visual impact in the county in general.

Mr. Kennedy added that the applicable Colorado statute that refers to solar panels has two parts. The first part says that covenants may not prohibit solar panels. The second part says that the covenants may apply aesthetic provisions that impose "reasonable" restrictions on solar energy devices that do not significantly increase the cost of the device. The ACC feels that the alternative locations are "reasonable" even if they are not as efficient as the current site.

Howard Green said that one of the seeds for the dispute is that the Land Use Code's definition of the term "structure" is inadequate and allows for a loophole. The intent of the Visual Impact Regulations (VIR) is clear: do not deface the escarpment. The inadequacy in the definition of structure is currently being addressed. He agreed that the issue is not whether or not solar panels are allowed, but the placement of the panels.

Mr. von Delden spoke about reflections as they apply to solar panels. One type is the reflection off a reflective surface such as windows, etc. He rebutted Ms. Williams's concern about the increasing angle increasing the reflectivity. He admitted that when he was plumbing the panels, he had them in a position that was offensive, but he stated that he would guarantee that the panels would be rotated in such a way that the reflection would not be directed in any way to the valley, only upward. The intent is that the reflections off these panels would be the same as reflections off any window throughout the year where you would see the clouds in the sky reflected off the window, that there would be no direct solar reflection off the panels.

Mr. von Delden next responded to the sites that were identified as alternative sites for relocation of the panels. He referred to his letter dated July 6, 2005 (Petitioner Exhibit D-1) and stated that the evaluation of those potential sites was poorly done. He discussed the particulars of the letter explaining why, in his opinion, the proposed sites are unacceptable.

He continued to speak about requirements and regulations. He reiterated that he had done a fair amount of research on the location including reviewing a brochure from the Land Use office on building in Ouray County and what work was allowed without a permit. He explained why he felt that his structure met those qualifications, in particular those for a platform. He talked to the Land Use staff who said that a platform is considered a deck with people on it. He submits that his frame is basically a deck without people on it, it has panels. In that case, the structure falls within the parameters of work allowed without a permit in Section 106.2 of the Uniform Building Code (UBC).

Mr. von Delden admitted that the County had disagreed with him and insisted on a building permit. He submitted an application and he and Paul Christensen reviewed it. According to Mr. von Delden, Mr. Christensen indicated to him that the structure in the present location did not violate any County regulations and he was prepared to issue a building permit once it was approved by the ACC. The ACC disallowed the location. Mr. von Delden then referred to Section 9 of the Log Hill Village covenants that deals with solar panels and states that panels are allowed provided they are adequately screened from other lots and from Pine Road. He submitted that his solar panels are not visible from any other lot in the PUD and they are not visible from Pine Road, thus, he meets the requirements of the covenants. The term "on the face of the escarpment" has been used and Mr. von Delden contends that his panels are not on the "face," which is rock, but on the south slope of Log Hill Mesa. Because of these reasons, he feels his project should be approved.

Mr. Kennedy rebutted several of Mr. von Delden's arguments regarding the excessive cost of an installation as referenced in the Colorado Statute, references to the ACC covenants as references to satellite receivers, and the term "face" vs "escarpment," which he deferred to the Land Use staff to clarify.

Commissioner Batchelder clarified that Section 9 of the covenants is the relevant section.

Commissioner Albritton asked Mr. von Delden if, during his research, he had conversations with staff to clarify that solar panels were included in the structures allowed without a building permit before he proceeded.

Mr. von Delden could not recall if he had but he had talked to David Wine who had constructed a large array of panels years ago and asked what procedure he had gone through. Mr. Wine had said that there were no County regulations prohibiting the construction of solar arrays on the south slope of the mesa.

Commissioner Albritton asked about the cost of the solar panels. Mr. von Delden stated that he had invested \$7,000 so far but that he stopped work once the dispute began and he put everything on hold until a decision could be reached.

Commissioner Westfall asked what determined, by the UBC, that this particular structure was not a platform.

Greg Moberg stated that it was Mr. Christensen's interpretation that a platform was like a deck.

Commissioner Westfall asked Mr. von Delden if he was adequately informed as to Mr. Christensen's interpretation of a platform.

Mr. von Delden said that he disagreed with Mr. Christensen's personal interpretation that platform was synonymous with deck. It was at this point that Mr. Christensen told him to submit an application for a building permit. A discussion followed as to the definition of a platform.

Mr. Canright asked Mr. von Delden how high the platform is when elevated.

Mr. von Delden replied that it is 6 to 8 inches above the top level of the frame; however, he offered to go with less efficiency of the panels to ensure less reflection. He stated that he would also be open to hiring a professional solar person to confirm that his panels could be adjusted to avoid reflection year round.

Mr. Kennedy noted that Mr. von Delden had yet to agree that the ACC has the ability to regulate solar panels.

Mr. von Delden responded that the purpose of architectural control within a PUD is to regulate structures and storage and dogs and lights and all that is in the Village, and does not apply because it has nothing to do with his panels.

Commissioner Batchelder asked Mr. von Delden if he had previously testified that the interpretation and subsequent ruling by the ACC based on Item 9 in the covenants was in error.

Mr. von Delden agreed but said that it was an error because, in his view, the purpose of the ACC within the PUD is what he described previously, and that it does not apply because this issue has nothing to do with architectural control within the Village.

Commissioner Batchelder clarified that Mr. von Delden had not applied for ACC approval prior to construction.

Mr. von Delden said that is correct because the panels are not in view of any lot or any road in the Village.

In answer to a question by Commissioner Westfall, Mr. Kennedy explained that any building or installation of any sort beyond the most trivial must come before the ACC.

Commissioner Westfall asked if the ACC had been an active committee and Mr. Kennedy replied, "Yes."

Commissioner Westfall asked Mr. von Delden if he was aware of the ACC and that all structures must go before them.

Mr. von Delden replied that he was aware to the degree that neighbors are impacted, that one certainly must have awareness of other's property values, views, etc. However, to the extent that the ACC would regulate a frame structure on the hill with four little posts to support it to set panels in did not enter his mind at all.

Mrs. Von Delden addressed the Board. She related that when Mr. von Delden made the decision to install a platform at the present location, he did so primarily because the panels in this location would not have to be raised at a great angle because of the natural slope of the hill, and because of the proximity to their house. A third reason was because it could not be seen by either neighbor or from the road. Of the other locations identified by the ACC, the primary one is close to Pine Drive. She described the problems with this location. If the issue is that the structure must not be seen by neighbors, she asked, "Why move it?" As to the reflection issue, views across the valley offer reflections from Elk Meadows, Eagle Hill, etc. from windows, metal roofs, fences, utility poles and wires. The fact is that reflections in this County are a given, even the river reflects. She concluded that the least conspicuous spot is the current location.

Commissioner Batchelder clarified that the panels were indeed put up without a building permit, which Mr. von Delden claims he felt was not necessary, and Mr. von Delden replied that they were but that he did apply for one. Commissioner Batchelder ascertained that the building department does maintain that a building permit must be applied for before placement of these collectors and that the building permit cannot be issued absent approval of, in this case, the ACC pursuant to Section 19.23. The ACC maintains that the authority exercised is in Section 9 of the covenants and that Section 4.B would indicate that permission must be applied for. He asked if there were any other sections that apply. Mr. Kennedy noted that there is wording that the Committee shall use its collective experience and judgment.

Commissioner Batchelder asked Mr. Moberg if a building permit would be issued for collectors in the County if there were no issues with homeowners associations and subsequent approvals that Section 19.3 in the Land Use Code requires and Mr. Moberg replied that it would. He clarified that a permit would be required by the UBC, not the LUC.

Commissioner Batchelder noted that there is evidence on the record that a number of people view that Section 9, Visual Impact Regulations, should apply but because of an oversight in definitions, they do not.

Mr. Canright clarified that Section 9 also requires that all PUDs adopt covenants that do enforce visual impact and the statement in Section 9.8.B. is that *any* construction must have prior approval.

Commissioner Batchelder expressed his reservations and concern over a specific legal point and wanted to speak to the County attorney prior to rendering a decision. He offered to abstain, however, if the other two Commissioners wished to render a decision. Commissioner Albritton agreed with Commissioner Batchelder. She added that she admired Mr. von Delden for taking on the project and noted that she, personally, would like to encourage people to look at alternative energy sources. She explained that, as a Commissioner, she needs to look at what precedent would be set. In conclusion, she supports the intent and wants to encourage alternative energy sources but wants to do so in a way to ensure that the Board would not have to contend with similar disputes in the future.

Commissioner Westfall agreed that she had no problem with seeking legal advice.

Commissioner Batchelder directed that an executive session be scheduled at the earliest possible convenience with the County Attorney and the Land Use staff. The Board will render findings and a decision as close to August 1, 2005 as possible.

*☞ Clerk's Note: The Commissioners will meet in executive session on July 25, 2005 and render findings and a decision on August 1, 2005.*

**12:30 The Commissioners reconvened as the Board of County Commissioners and recessed for lunch:**

**1:30 Commissioner Batchelder reconvened into regular session:**

**E. 1:30 Public Hearing - Amendment to Section 9 of the Ouray County Land Use Code**

1. Request to delete County Road 1 from the designated roadways subject to the Visual Impact Regulations under subsection 9.3 "Criteria and Standards" and possible adoption of associated resolution.

Commissioner Batchelder opened the public hearing and entered into evidence the Staff Report and Planning Commission Minutes and Resolution (County Exhibit E-1) and an email from Randal Fischer (Petitioner Exhibit E-1).

Randal Fischer addressed the Board. He described how his petition had, in his view, been improperly handled by the Planning Commission. He provided the Board a copy of his complete submission (Petitioner Exhibit E-2 [on CD]). He made introductory remarks and noted that he and his wife have lived here since early 1997.

Mr. Fischer began his testimony by reading from Petitioner Exhibit E-2. He observed that there has been much infrastructure and development on Log Hill Mesa since 1997 when the current version of the regulations in Section 9 of the Ouray County Land Use Code was approved. His petition is focused on a piece of land adjacent to 3.7 miles of County Road 1 (CR1) included as a visual impact corridor that has experienced severe consequences of prior Board of County Commissioners decisions and it is these consequences of prior decisions and actions, and the need to address them, that lies at the heart of his petition. He explained that it was not his intent to appear confrontational. He was before the Board to 1) summarize the facts supporting his petition to remove the small segment (27%) of County Road 1 from inclusion in Section 9.3.A. of the Land Use Code, and 2) to inform the Board of the factual details of how the Planning Commission had improperly handled the petition in presenting it to the Commissioners.

Mr. Fischer continued to present his case, which is detailed in Petitioner Exhibit E-2. According to the petition, "the unarguable conclusion based on all of the facts is that a) there is no equitable basis to support retention of the southern 3.7 miles of County Road 1 as subject to the Section 9 provisions of the County's Visual Impact Regulations (VIR); and b) therefore, the language of Section 9.3A should be modified so as to delete reference to this road segment. This is what the first part of our two-part Petition requests that you consider and take action upon."

Mr. Fischer read, "In absence of any constructive involvement by our Planning Commission – whose members you appoint – the only substantive *official* input to the matter before you is that contained in Mr. Canright's excellent June 15<sup>th</sup> Supplemental Staff Report... Earlier, I've cited from this Staff Report the finding that there has been discovered, '*...no insight into the reasoning for including this portion of County Road 1...*' in the scope of our Visual Impact Regulations. I will conclude this analysis of the Section 9 regulations by noting the several other findings cited in this Staff Report. I'll add here, that *not even one* of these findings was noted, by anybody, in the June 21<sup>st</sup> Public Hearing. These are all direct quotes from Mr. Canright's Report." (*Please refer to Petitioner Exhibit E-2 for details.*)

Mr. Fischer explained that "The issue here is not one of having the two sides of County Road 1 subject to different Visual Impact regulations. This is not the case now, and this is not what our Petition proposes (although the public billing of this topic succeeded in presenting such an impression). Rather, the issue is one of the southern 27% of County Road 1 being subject to such regulations – both east and west sides – whilst the northern 73% of this same road is not subject to those same regulations – on either side of that majority segment of County Road 1." (*Please refer to Petitioner Exhibit E-2 for details.*)

Mr. Fischer continued, "In summary of Mr. Canright's June 15<sup>th</sup> Staff Report [part of County Exhibit E-1], we judge that he got it exactly right and that his conclusions entirely support the reasonable Petition for both our two suggested modifications dealing with Section 9 of our L.U.C."

Mr. Fischer discussed several conclusions and observations regarding the Visual Impact Regulations and the Planning Commission but hastened to point out that his remarks were not directed at individuals but focused on institutional problems.

In conclusion, Mr. Fischer noted that the first choice is to remove the 3.7-mile corridor of County Road 1 from the scope of Section 9. The second choice would be to make 100% of the road subject to the Visual Impact Regulations. He explained that whatever the decision would be on this petition he would return in the future for the Board's consideration of an application for rezoning of some of the lands lying west of County Road 1.

Commissioner Batchelder explained the process that the County must go through for changes to the Land Use Code. Any changes must go through the Planning Commission by State Statute first and then be presented to the Board of County Commissioners.

John Weaver, resident and landowner of affected property, noted his opinion is to leave it as it is or he would be in favor of taking it all the way to Colona.

Sheilah Williams, resident, presented photos to the Commissioners (Public Exhibit E-1) that she had taken earlier in the day. She noted that Mr. Fischer had good points in his arguments. She stated that she supports the option to include all of County Road 1. She urged the Commissioners to follow the Planning Commission's recommendation for denial.

Deborah Fischer, Randal Fischer's wife, addressed a comment about their house's visibility from the road. She explained that they would like to have built farther back but the Planning Commission would not allow it.

Ken Lipton, president of Ridgway-Ouray Community Council (ROCC), offered a petition into evidence (Public Exhibit E-2). The petition strongly opposes Randal Fischer's proposal stating that approval of the request would set a precedent for major visual impacts. He also presented into evidence an email from Jane and Lyle Nash who oppose Mr. Fischer's request (Public Exhibit E-3). Mr. Lipton discussed the Master Plan and explained that it was written to ensure sensible growth and to protect cherished life quality issues. One purpose of the Master Plan is for the protection and enhancement of property values. He alleges that Mr. Fischer's proposal will reduce property values in the long run. Therefore, on behalf of the members of ROCC, he is opposed to the proposal. As a private citizen and someone who has attended countless hours of Planning Commission hearings, he is strongly in disagreement with Mr. Fischer's comments "attacking" the commission. He commended the members of the commission as dedicated citizens who put in many hours for a small stipend for the good of the county and, although he does not always agree with them, he finds no basis for the sort of attack heard today.

Penny Starr, speaking on behalf of herself and her husband, Frank Starr who had a previous commitment, implored the Commissioners not to change the visual impact regulations noting that they have been effective and functioned well. They would like to see the laws and regulations upheld.

Penny Devin asked Mr. Fischer a question about the height of the buildings he is anticipating building and he replied that it would be within the County's limitations.

Howard Greene, member of the Planning Commission, defended the commission as a devoted group who work very hard. He explained that he had read Mr. Fischer's long application and had thought long and hard about it. He noted that at the public hearing there was not one comment supporting the application. Every comment was against it. There were two petitions against it. He felt that the commission's efforts had been mischaracterized.

Scott Williams echoed what had been said about the Planning Commission hearing. As an attorney and a community activist, he related that he has been to many hearings and has been very impressed by how the members conducted themselves. He spoke about his reasons why the VIRs should be extended along the entire extent of CR1 all the way to Colona. He extolled the insight of the County leaders for enacting the VIR as a management tool and noted that now, when the County will be presented with a rezoning proposal, is not the time to get rid of them.

There were no further comments.

Commissioner Albritton requested time to review the testimony presented by Mr. Fischer.

Mr. Fischer asked the Commissioners that, if they decide to accept the Planning Commission's recommendation of denial, they please consider his alternative recommendation.

A discussion followed as to whether the Planning Commission had considered the alternative recommendation and it was determined that it had only considered the request for elimination of the portion of CR1 requested by Mr. Fischer. Greg Moberg advised that this being the case, the request would have to go before the Planning Commission to consider inclusion of the remaining portions of CR1.

Sheilah Williams stated that she would like an opportunity to make comments on the newly submitted material. Mr. Fischer said that it is available on disk and on his website.

Ken Lipton asked if the new evidence must go back to the Planning Commission and Commissioner Batchelder explained that all evidence presented at one hearing does not need to be presented at the other.

The hearing was continued to August 1, 2005 at 10 a.m.

**2:40 Commissioner Batchelder took a brief recess and reconvened at 2:50:**

**F. 2:50 Land Use Item:**

**1. Fisher Canyon South Final Development Plan/Final PUD**

Applicant: East-West 80  
Representative: John Peters  
Location: Filing No.3 of the Fisher Canyon South PUD, located east of  
County Road 1 in Sections 24 and 25, Township 46 N, 8W, NMPM

Greg Moberg, County Planner, and Doug Canright, Planner/Project Manager, were present along with representative for the Applicant, John Peters.

Commissioner Batchelder explained that the Commissioners would consider the Staff Report and Planning Commission recommendation as evidence presented to them (Exhibit F-1). He asked if there were any questions.

Commissioner Batchelder recommended that the County take 110% of the contracted amount and retain 10% for administrative costs. Commissioner Albritton and Commissioner Westfall agreed. Greg Moberg suggested a draw down clause to maintain the 10%.

A discussion followed regarding re-vegetation of the disturbed area and a bond.

Commissioner Batchelder proposed adding requirements for reseeding and control of the weeds by the homeowners' association. A discussion followed.

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve Resolution 2005-043 with amendment to the Improvements Agreement based on 110% of cost presented and disbursement of funds and verification from Land Use that the covenants state that the subdivision is responsible for weed control and seeding of the right-of-way. Authorization to sign the Improvements Escrow Agreement, the Final Improvement Agreement, improvement agreement and addition to contract is contingent upon completion of the various amounts plugged in. There was no discussion. Motion passed unanimously.

**G. 3:10 The Board of County Commissioners convened as the Board of Social Services concerning the following items:**

1. Reports:

- Earned Revenue and Expenditures, May 2005:
- Check Register for the Month of June 2005:
- Expenditures through Electronic Benefit Transfers, June 2005:
- County Allocation/MOE Report, May 2005:
- Balance Sheet, May 2005:
- Caseload Report, June 2005:

Allan Gerstle, Director of Social Services, was present and requested acceptance and approval of the reports listed above.

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the Earned Revenue and Expenditures for May 2005, the Check Register for the Month of June 2005; the Expenditures through Electronic Benefit Transfers for June 2005; the County Allocation/MOE Report for May 2005; the Balance Sheet for May 2005; and the Caseload Report for June 2005 as presented. There was no discussion. Motion passed unanimously.

2. For BOCC Approval:

- MOU (Memorandum of Understanding) with the State for the Colorado Works Program, FY 05/06

Mr. Gerstle withdrew the request to sign the MOU until further meetings with CCI.

3. Discussion:

Mr. Gerstle discussed the senior transportation program in Ouray County and he commended the volunteers, Walt and Nancy Rule, who run it. They recently had a difficult time with a client who had mental health issues and Mr. Gerstle would like to give them a gift certificate from the Beaumont as a token of the County's appreciation for their services. Commissioner Westfall suggested putting a letter of appreciation in the newspaper.

**I. 3:20 Commissioners/Administrative Reports:**

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

Connie Hunt, County Administrator, discussed the following:

- 1) Tree trimming contract for the trees at the Courthouse. Removal of the trees was discussed and it was noted that application would need to be made to the City of Ouray. Eventually, the plan is to replant to historical landscaping. The Commissioners agreed but said to leave the trees as long as possible to have a vacant area for the shortest time possible.

Commissioner Albritton discussed the following:

- 1) A donation of \$200 to ROCC for the "Oil and Gas 101" presentation to educate the public on property rights
- 2) Asked about the status of the oil and gas letters

Commissioner Westfall had nothing to discuss:

Commissioner Batchelder discussed the following:

- 1) Representatives of Region 10 indicated at a previous meeting that they are not in a good financial situation. A discussion followed on the economic viability of the group and what is being done to rectify the situation.
- 2) Met with the homeowners in Elk Meadows to discuss the formation of a district.

**H. 3:45 Executive Session for the purpose of determining positions relative to matters that may be subject to negotiations under C.R.S. 24-6-402(4)(e):**

**M/S/P**—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to move into executive session pursuant to C.R.S. 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiations.

*I, Don Batchelder, hereby attest that the portion of the executive session during which no minutes were taken was confined to a topic authorized for discussion in an executive session.*

\_\_\_\_\_  
*Don Batchelder, Chair*

Those present for the executive session included Commissioner Batchelder, Commissioner Albritton, Commissioner Westfall, Connie Hunt, County Administrator, and Linda Munson-Haley, Deputy Clerk of the Board.

**4:30 The Board of County Commissioners came out of executive session and Commissioner Batchelder adjourned the regular session:**

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS  
OURAY, COLORADO

ATTEST:

\_\_\_\_\_  
Don Batchelder, Chair

\_\_\_\_\_  
Michelle Nauer, County Clerk and Recorder

\_\_\_\_\_  
Heidi Albritton, Vice Chair

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

\_\_\_\_\_  
Kristy Westfall, Member