

The Board of County Commissioners met in regular session on August 1, 2005. Those present for the session were Don Batchelder, Chair; Heidi M. Albritton, Vice Chair; Kristi R. 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. There was no discussion. Motion passed unanimously.

2. Request for approval of Minutes for July 11, 18, 25, and 26, 2005 Board of County Commissioner/Board of Equalization Meetings:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the Minutes for July 11 (with minor changes), July 18, and July 25, 2005 as presented. There was no discussion. Motion passed unanimously.

☞ Clerk's note: The July 26, 2005 Minutes will be presented at the August 8, 2005 meeting.

3. Request for approval (ratification) of the following items:

a. Support letter for Colona Grange:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to ratify the letter of support for the Colona Grange as presented. Discussion. Commissioner Batchelder provided the basis for his signature, explaining that this is part of an effort supported by a previous Board of County Commissioners, and requires no financial obligation on the County's part. The Grange has historic designation at this point; this will up the priority for restoration funding. Motion passed unanimously.

4. Request for adoption of surplus property Resolution 2005-045 concerning the disposal of certain Sheriff's equipment:

M/S/P—Motion was made by Commissioner Westfall and seconded by Commissioner Albritton to adopt Resolution 2005-045 regarding disposal of handguns in the Sheriff's Office as presented. Discussion. Commissioner Batchelder discussed the trade-in value versus the \$320 the officers had paid to purchase the equipment, and suggested amending the motion to make adoption of the resolution subject to verification that the \$320 was equal to or higher than other means of disposing of the property. Commissioner Westfall amended the motion to state subject to verification from the County Sheriff that this is the highest appraised value. Motion passed unanimously.

5. Request for approval of "Report of Changes" for a manager change regarding the Tavitac Corporation Liquor License:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the manager change for the Tavitac Corporation Liquor License as presented. Commissioner Westfall asked for background of how this change takes place and Ms. Hunt offered an explanation. Motion passed unanimously.

6. Consideration of letter to BLM regarding the August 11, 2005 Competitive Oil and Gas Lease Sale:

Commissioner Batchelder provided a draft of a letter from the Commissioners to the Bureau of Land Management (BLM). The gist of the letter was that the Ouray County Board of County Commissioners had received a request from the Ridgway-Ouray Community Council to be a signatory on a letter of protest and, whereas the Board had not been a party to the drafting of the protest, the Commissioners did not feel that it would be appropriate to add their signatures. Commissioner Albritton and Commissioner Westfall concurred.

M/S/P—Motion was made by Commissioner Westfall and seconded by Commissioner Albritton to approve the Chair's signature on a final version of the letter as presented. There was no discussion. Motion passed unanimously.

7. Decision on treatment of Oxeye Daisy infestation:

Connie Hunt, County Administrator, discussed the treatment and control of Oxeye Daisy in the Billy Creek area. She recommended that the County cost share the treatment of the Harren Ditch and Harren Pipeline that includes both private and public lands, and treatment of the Jutten property.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to adopt Ms. Hunt's recommendations. There was no discussion. Motion passed unanimously.

9:44 Commissioner Batchelder recessed and reconvened at 9:45:

B. 9:45 The Board of County Commissioners convened as the Board of Adjustment concerning the following item:

1. Decision and Findings on Appeal of County Notice and Order to remove solar panels constructed without a permit and adoption of Resolution 2005-032:

Applicant: Ed von Delden
Location: 782 Pine Drive, Ridgway, CO 81432

Commissioner Batchelder explained that the Board of Adjustment had had discussions with the County Attorney and that she suggested tabling the decision to allow her time to formulate the Findings. Commissioner Batchelder advised that the Commissioners were not inclined to table the decision and he read from a draft that he had prepared prior to the meeting titled "Findings and Decision Regarding Von Delden Appeal of County Notice and Order to Remove Solar Panels Constructed Without a Permit" (Exhibit B-1) denying Mr. von Delden's request to overturn the ruling of the Building Official.

M/S/P—Motion was made by Commissioner Westfall and seconded by Commissioner Albritton to approve Resolution 2005-032 with the attachment of the Findings and Decision subject to legal review of the Findings for clarification only. Discussion.

In reply to a question from Mr. von Delden, Commissioner Batchelder explained the difference between the Board of Adjustment and the Board of Appeals noting that the action taken today does not preclude appealing the decision to the Board of Assessment Appeals.

Mr. von Delden expressed his dismay over the ruling restating his contention that he is in compliance with the covenants and, therefore, the Architectural Control Committee's (ACC) objection is inconsistent with the covenant requirements and is invalid because the ACC is talking about County visual impact. Commissioner Batchelder explained that this was taken into consideration but that the Commissioners have to rule on County regulations stated in the Land Use Code requiring approval by the ACC before a building permit could be issued.

Mr. and Mrs. Von Delden continued to object, explaining that in their view this is strictly a County visual impact issue and should be ruled on by the County.

Mr. von Delden asked about the implications of the solar access law. Commissioner Batchelder explained that it did not appear that the covenants denied solar access. Commissioner Westfall read the state statute (Exhibit B-2), which differed from the information Mr. von Delden acquired from the Governor's Office of Energy Management & Conservation website and presented at a previous hearing (*part of Applicant's Exhibit C-1, 6/6/05*).

Commissioner Batchelder clarified that the covenants are a contractual agreement between people who live in a subdivision and the County does not have the authority to change covenants.

Mr. von Delden next addressed the Notice and Order and stated his objection to the language that the panels need to be removed from his property. He would like an opportunity to reevaluate the alternative locations suggested by the ACC. Commissioner Batchelder noted that the Order would be changed to read "from the *current* location."

Mr. von Delden discussed other options, noting that he would need more than the thirty days given in the Notice and Order to research other locations and move the panels. Commissioner Batchelder and the Board agreed to extend the deadline to 90 days at which time Mr. von Delden would either abandon the project or present a new proposal.

Ms. Hunt advised the Board to speak with the County Attorney before proceeding.

Commissioner Westfall allowed that she had no problem with that but that the motion today stands, noting that this is a structure without a building permit.

Commissioner Albritton asked for clarification as to when the 90 days would begin, especially if the Board would be conferring with the attorney.

Commissioner Batchelder suggested that the motion and second be rescinded and a motion to table be made. He also indicated for the record that the Board would look favorably on the two requests made by Mr. von Delden and that the decision should not be conceived in any way as being opposed to solar energy. These sentiments would be conveyed to the building official and further action tabled to a date that would allow the building official time to consult with the County Attorney to ascertain the possibility of amending the Notice and Order.

More discussion followed between the Commissioners and the County Planner regarding an extension.

Ms. Hunt interjected that this is really a legal issue and should involve the County Attorney.

M/S/P—Motion was made by Commissioner Westfall and seconded by Commissioner Albritton to amend the motion to add that the effective date of the resolution would be September 15, 2005 upholding the Notice and Order allowing for thirty days from September 15 for removal or relocation of the panels from their current location. There was no further discussion. Motion passed unanimously.

Commissioner Batchelder offered closing remarks noting that it is important to recognize that the Board of County Commissioners' decision was based not on solar access or saying that the ACC was appropriate or inappropriate but simply on County code, and that the Commissioners have voiced their views that they do support solar energy.

10:32 The Board of Adjustment reconvened as the Board of County Commissioners:

10:32 Commissioner Batchelder took a brief recess and reconvened at 10:40:

C. 10:40 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:** *(The applicant submitted a written request to continue the hearing to August 8, 2005, at 11:00 a.m.)*

Commissioner Batchelder reopened the public hearing continued from July 11, 2005 and noted a request from the applicant to continue the hearing to August 8, 2005 at 11 a.m.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to continue the hearing to August 8, 2005 at 11:00 a.m. There was no discussion. Motion passed unanimously.

D. 10:15 Commissioner/Administrative Reports:

Linda Munson-Haley, Clerk of the Board, discussed the following:

- 1) Road Committee resignation and letter of thanks. By consensus, the Board approved the letter.

Connie Hunt, County Administrator, discussed the following:

- 1) Paul Sunderland informed her of a possible Local Improvement District (LID) on Eagle Hill and that the deadline had passed for a ballot question for this year.
- 2) Tentative agenda for the Fairgrounds Advisory Committee meeting.
- 3) Email from Kathy Peckham with the U.S. Forest Service regarding approval of Bob Risch as official representative for the County for decisions to be made in relation to the Forest Service Red Mountain Abandoned Mine Lands Project. Commissioner Albritton asked to have Ms. Peckham speak to the Board as to the responsibilities of the position.
- 4) She gave the Board a "heads up" that she would be submitting an audit extension for ratification next week. She explained that almost all counties in the state would be asking for extensions because of CBMS problems. The extension request had to be filed by July 31.
- 5) Termination of engineering services agreement with the current contractor. A termination letter was presented for Board signature. She will be rebidding the contract and noted that the County would be using Del-Mont for any immediate needs.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve termination of the current engineering contract and signature on the letter. There was no discussion. Motion passed unanimously.

- 6) An annual request from Tri-County Water for a contribution for educational programs at the schools regarding conservation issues. The Board determined that it had not been budgeted for this year but that they could consider and budget for next year.
- 7) Public Lands Partnership (PLP) discussion.

Ginny Harrington and Walt Rule addressed the Board regarding travel plans for the Red Mountain Task Force.

Commissioner Batchelder provided a background of the properties explaining that the County owns historic properties on Red Mountain and contracts with the Ouray County Historical Society to maintain them.

Ms. Harrington presented a memo to the Ouray County Commissioners dated August 1, 2005 (Exhibit D) and discussed an upcoming PLP meeting on August 4 for information sharing and to look at issues. She stressed that it would be imperative for one or more of the Commissioners to be present. Commissioner Albritton will attend.

Commissioner Batchelder asked how roads are designated as being motorized or nonmotorized and was told that it is through the Forest Service Travel Management Plan. Ms. Harrington emphasized that where there are certain delicate historic structures, motorized vehicles may not be suitable for these areas.

Commissioner Batchelder asked if the Red Mountain Project and other volunteer groups were in agreement as to what trails should be designated nonmotorized and motorized and Ms. Harrington said that they were.

By consensus, the Commissioners advocated the positions expressed by the Ouray County Historical Society and the Red Mountain Task Force.

Commissioner Westfall discussed the following:

- 1) Will attend the Yankee Boy Canyon Creek Conservation Annual Meeting

Commissioner Albritton discussed the following:

- 1) The Revolving Loan Fund that she had planned to attend last week was cancelled.
- 2) She inquired about the letters regarding oil and gas and was told that they had been mailed.
- 3) Requested an eminent domain discussion in light of a recent Supreme Court decision

Commissioner Batchelder discussed the following:

- 1) Leach mining. He explained that a year or so ago a request came to the Commissioners from a group to look at banning leach mining in Ouray County. At that point, the Commissioners had a meeting and took public input. There are two types of mining, heap and vat leach mining. The Commissioners had discussed that it may not be reasonable to outlaw vat leach mining but because of its environmental history, heap leach mining may need to be outlawed. He now asked the two new Commissioners how they would like to proceed. Both Commissioner Albritton and Commissioner Westfall agreed that another public hearing would be reasonable as long as both sides of the issue are present. Connie Hunt was directed to schedule a hearing. Walt Rule will provide Ms. Hunt with the most recent copy of the proposed legislation for distribution.
- 2) The Region 10 annual picnic meeting was held last week. He broached the issue again of Region 10's financial woes and noted that its problems must be addressed to maintain and be a viable entity. This could mean a dues increase for the upcoming budget year. The Revolving Loan Fund program is not supporting itself and he questioned the appropriateness of the use of grant money given to Region 10, for loans that were loaned out and paid back, for administrative overhead and operational costs.

E. 11:12 Friends of the Ouray County Fairground 501 (c)(3) items:

- 1. Request for adoption of Resolution 2005-046 appointing a Board of Directors for the Friends of the Ouray County Fairground 501(c)(3) nonprofit organization:**

M/S/P—Motion was made by Commissioner Westfall and seconded by Commissioner Albritton to adopt Resolution 2005-046 appointing the Board of Directors for the Friends of the Fairground. There was no discussion. Motion passed unanimously.

- 2. Request for adoption of Resolution 2005-047 indicating the Board of County Commissioners' support of the Friends of the Ouray County Fairground 501(c)(3) nonprofit organization and its Board of Directors, fundraising efforts, energy and enthusiasm; and indicating the provision of initial financial resources in an amount not to exceed \$25,000 (with a 5-year payback, if possible) to enable the onset of fundraising endeavors in various forms including the use of grant writers:**

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to adopt Resolution 2005-047 providing for the initial financing of the Friends of the Fairground with a five-year payback. There was no discussion. Motion passed unanimously.

**G. 11:15 Roger Henn – Ouray County Council on Aging:
(This item was originally scheduled for 11:45)**

- 1. Discussion concerning Vehicle:**

Roger Henn, representing the Ouray County Council on Aging, provided a brief background to the Commissioners. The Older American Act was enacted in 1963 and shortly afterwards the Board of County Commissioners created the Ouray County Council on Aging. This was before there was a Region 10. Ouray and Delta counties are the only two counties in Region 10 incorporated as nonprofit organizations. He explained that relations with Region 10 are strained and expressed a need to get back to a good relationship.

Mr. Henn continued to explain that the problems of aging in Ouray are growing insurmountably. He has been on the Ouray County Council on Aging since 1983 and president for maybe 15 years, and his time is about done.

He spoke specifically about the transportation problem. The Council's vehicle has always been licensed as a County vehicle and is not wheelchair accessible. The program now has a wheelchair case and the only way to accommodate the client is to lift him physically into the van. Mr. Henn noted that this is not safe for the passenger or for the volunteer drivers. He explained that all other counties have paid drivers and that Region 10 provides funds for this. Ouray County

receives very little funds from Region 10 that only cover administrative expenses. The program has received some financial help from Social Services and from outside contributions. There is a need now for a new vehicle that is wheelchair accessible. Delta County is getting a new van from the State but this has to be handled through the Board of County Commissioners. He informed the Board that it would not cost the County anything but that there is a two-year waiting list.

Commissioner Westfall asked Ms. Hunt to contact Delta County and the State to ascertain what process needs to be followed, and to report back to Mr. Henn and the Board of County Commissioners.

Mr. Henn concluded his discussion noting that he had many other items to discuss but would return another day.

F. 11:30 Shary Templeton, Executive Director of the San Miguel Regional Housing Authority:

1. Habitat for Humanity Partnering Discussion:

Shary Templeton, Executive Director of the San Miguel Regional Housing Authority, addressed the Board and introduced Michael Dorsey, a retired Undersecretary of HUD. She explained that she has a strong background in Habitat and gave an overview of the program. San Miguel County is considering becoming an affiliate and would like to expand to Ouray County. To this end, she wanted to meet with the Commissioners to begin a dialogue.

Mr. Dorsey added that they are not asking for money. Habitat does not accept government funds for its housing program. He explained that they are in the process of creating a service area but are not allowed to start building houses and go through the process until they are approved as an affiliate of Habitat. The first step would be a steering committee, and he and Ms. Templeton asked for recommendations of Ouray County citizens to be on the committee.

Commissioner Batchelder asked if they could do deed restrictions differently in each county of a service area and they said that they could.

Ms. Templeton explained that it takes about three years to become an affiliate.

Mr. Dorsey said that they are in the process of doing a housing needs assessment, collecting information on median income, how many households are in the community, etc. and asked how he would obtain such information on Ouray County. He explained that the purpose of this information is to demonstrate need to Habitat International.

Commissioner Batchelder replied that the County relies on Region 10 for that information.

Ms. Templeton explained that no official action was required from the Board; however, the Commissioners agreed to adopt a resolution of support.

The Commissioners and County Administrator discussed the need to ensure that counsel be present when legal issues arise during the meetings. Commissioner Westfall asked to have Ms. Crossley put on the agenda for the worksession on August 15, 2005 and asked to have her provide a complete legal issues update.

12:15 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 M. Albritton, Vice Chair

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

Kristi R. Westfall, Member