

The Board of County Commissioners met in regular session on August 22, 2005. Those present for the session were Don Batchelder, Chairman; 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 the warrants as presented. Discussion. Motion passed unanimously.

2. Request for approval of Minutes for August 1, 2, 8 and 9, 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 August 1, 2005; August 2, 2005; August 8, 2005 and August 9, 2005 Board of County Commissioners/Board of Equalization meetings as presented. There was no discussion. Motion passed unanimously.

3. Request for adoption of **Resolution 2005-048** supporting local efforts for a Habitat for Humanity Program:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to adopt Resolution 2005-048 supporting local efforts for a Habitat for Humanity program as presented. There was no discussion. Motion passed unanimously.

4. Review and Acceptance of Public Trustee's Report for July 2005:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to accept the Public Trustee's Report for July 2005 as presented. There was no discussion. Motion passed unanimously.

5. Review and Approval of Treasurer's Semi-Annual Financial Report:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the Treasurer's Semi-Annual Financial Report as presented. There was no discussion. Motion passed unanimously.

6. Review and Approval of Chair's Signature on an Addendum to the Waste Management Service Agreement:

M/S/P—Motion was made by Commissioner Westfall and seconded by Commissioner Albritton to approve the Chair's signature on an Addendum to the Waste Management Service Agreement as presented. There was no discussion. Motion passed unanimously.

7. Ratification of Letter of Appreciation and Grant Wrap-up to Jack Rowe:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to ratify a letter of Appreciation to Jack Rowe as presented. There was no discussion. Motion passed unanimously.

B. 9:45 Commissioner/Administrative Reports:

Commissioner Albritton discussed the following:

- 1) Spoke to Doug Gregory about filling a vacancy on the Road Committee and he agreed to serve.

M/S/P—Motion was made by Commissioner Batchelder and seconded by Commissioner Westfall to appoint Doug Gregory to the Road Committee. There was no discussion. Motion passed unanimously.

- 2) Talked to Ted Collin of the Tri-County Water Conservancy District (TCWCD) who asked the Commissioners for a letter of support for Ed Ingo's application for a seat on the TCWCD Board. She explained that time is of the essence.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the Chair's signature on a letter of support for Ed Ingo. Discussion. Commissioner Westfall noted that there were other Ouray County residents vying for the same position and she asked to see a list of the other applicants. The motion and second were withdrawn in favor of Board review of the list before sending a letter of support.

Commissioner Westfall discussed the following:

- 1) A citizen expressed concern over two items listed in the June expenditures for the County published in the *Plaindealer*. Ms. Hunt will research the items and reply by letter to the citizen.

Connie Hunt, County Administrator, discussed the following:

- 1) The purchasing policy is completed and a work session has been scheduled for August 30 at 1:15 p.m. to review and receive input from the department heads and elected officials.
- 2) Ken Charles provided information on a program through the University of Colorado for a two-year intern for the County. DOLA will pay for half of the salary. A discussion followed.
- 3) Provided an update on the progress of the budget

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

Commissioner Batchelder discussed the following:

- 1) A resident on Log Hill Mesa has a problem with access to his driveway as a result of the recent paving being done by the County. Commissioner Batchelder felt that the County's interests would best be protected by authorizing payment of the portion of the driveway that was affected by the raising of the roadway – about fifty feet. The engineer felt there would be money in the budget to accomplish this and the County would not be setting a precedent because there are no other driveways affected. The possibility of cost sharing was discussed and Commissioner Batchelder will work with the resident towards a resolution.

C. 10:00 Land Use Items:

1. Fairway Pines Estates, Filing 4A-1:

Owner's Name(s): Fairway Pines Golf Partners, Ltd.
Authorized Agent: Jim Willey
Location: Fairway Pines Estates, Filing 4A-1
Purpose: Request for Approval of a Final Plat Amendment for the previously approved Fairway Pines PUD

Jim Willey, representative for Fairway Pines Golf Partners, Ltd., and John Overholser, attorney, were present on behalf of the Applicant.

Greg Moberg, County Planner, provided a background of the project. Prior to final approval, the applicant was to receive approval for an amendment to Filing 4A-1 to dedicate thirty feet [from the centerline] for Cottontail to connect with Marmot.

Commissioner Batchelder referred to the Staff Report that indicated that proper notice had been sent out and approximately five percent of the landowners in 4A-1 objected but that the two-thirds approval requirement had been met.

M/S/P—Motion was made by Commissioner Westfall and seconded by Commissioner Albritton to approve and sign Resolution 2005-049. Discussion. Commissioner Batchelder noted that the Staff Report dated July 13, 2005 referred to a recommendation by the Planning Commission for approval subject to dedication of the additional right-of-way. Mr. Moberg notified the Board that this remains to be done and should be a condition of approval, and subject to final plat approval of The Estates at Fairway Pines. Commissioner Westfall asked to see a plat.

10:10 Commissioner Batchelder took a brief recess to allow Mr. Moberg to retrieve the plat and reconvened at 10:13:

Commissioner Westfall discussed particulars of the plat with the Applicants involving the status of the lot involved. A discussion followed regarding means of dedication, either by conveyance or by a plat note. The Applicants were amenable to either form.

Commissioner Westfall withdrew her previous motion citing the fact that she did not have the plat for reference to make an informed decision. She recommended having the County Attorney prepare a draft deed for Mr. Overholser's review to be presented in final form to the Board at a future meeting.

Commissioner Batchelder requested an amended plat signifying that the right-of-way belongs to the County.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to table any action until September 19, 2005. All parties were enjoined to present all pertinent, final documents at that time. Motion passed unanimously.

2. The Estates at Fairway Pines:

Owner's Name(s): James A. Willey, and Patsy and Jeffrey Dryer
Authorized Agent: Jim Willey
Location: The Estates at Fairway Pines
Purpose: Request for Final Development Plan and Final PUD Approval

Jim Willey, representative for Fairway Pines Golf Partners, Ltd., and John Overholser, attorney, were present.

Commissioner Batchelder noted that the recommendation from the Planning Commission was for denial based on the fact that Conditions #5 and #6 of the Preliminary Development Plan Approval dated June 9, 2003 had not been met and that adequate provision for the extension of Cottontail Lane to Ponderosa Drive had not been made. He discussed the actions available to the Board of County Commissioners.

John Overholser commented that the Applicant is requesting final approval despite the recommendation of the Planning Commission and will provide appropriate responses to the conditions.

Mr. Willey addressed Condition #5 that called for no more gravel operations in the pit. He stated that gravel operations had, indeed, ceased, defining gravel operations as drilling, brushing, mining and stockpiling of material. He noted that, as of today, there is a portion of a gravel pile left in the pit that needs to be hauled away but that he does not deem that as a gravel operation. The majority of the pile is on the Golf Partners Property with a small portion on The Estates Property and is to be removed this fall to build a parking lot for the clubhouse. When asked, Mr. Willey estimated that there is 7,000 to 8,000 tons left in the pit and that approximately 5,000 tons would go to the parking lot project with the remaining to go into parking lots next to the clubhouse. [1A/1B]

Commissioner Batchelder spoke to Mr. Willey's contention that gravel operations only include the mining and crushing of gravel, not the loading and hauling. Commissioner Batchelder differed with Mr. Willey's interpretation. He noted that, whereas there is a specified future use of the gravel, a definitive resolution would be to require a bond to ensure the hauling of the gravel out of the pit, thereby satisfying Condition #5. A discussion followed. Commissioner Albritton stated firmly that, in her view, the condition had not been met. Commissioner Batchelder asked for clarification of Commissioner Albritton's interpretation of gravel operation. She explained that the operation is either finished and completed or not; it should not be ambiguous. She did not feel the need to make concessions.

Mr. Willey maintained that there is no gravel on the site in question and that there are no ongoing operations.

Mr. Moberg clarified that the pit is not permitted because it is owner-operated, and cited the definition of gravel operation in the Code to include transportation.

Commissioner Westfall agreed with Commissioner Albritton.

Mr. Overholser asked the Board to consider Commissioner Batchelder's suggestion of bonding.

Commissioner Batchelder observed that there were more serious issues for denial than just this one and that, absent meeting those conditions, this is a moot point.

Mr. Overholser addressed Condition #6 regarding a service agreement with the Fairway Pines Sanitation District ("District") and pointed out that representatives from the sanitation district, Carl Conti and attorney, David Reed, were present. The position of the Applicant is that the developer and the "District" have come to an impasse in negotiations and the developer is proposing a plat note that the lots be approved for individual septic disposal system (ISDS) installation on a lot-by-lot basis. Furthermore, the plat note will state that, "ISDS is prohibited on lots in The Estates at Fairway Pines but that at such time as there is an agreement with the 'District' to provide service, that the ISDSs will be abandoned and no further ISDSs could be installed." This will allow the project to be approved and go forward. Mr. Overholser stated that there should be no problem with ISDSs due to the size of the lots but that the Applicant would submit to a condition of engineer approval. In conclusion, Mr. Overholser asked that the Board of County Commissioners approve the plat note.

Commissioner Batchelder reminded the Applicant that a condition of preliminary plat approval by the Board of County Commissioners was proof of a service agreement for connection to the Fairway Pines Sanitation District. One of reasons that the sanitation district was formed was because of failure of septic systems in the area due to underlying rock and the inability of leach fields to work effectively. He further stated that the County is not party to the conflict between the "District" and the developer.

Mr. Overholser explained that the reason for some earlier failures of ISDSs was that they were on one-acre sites. He pointed out that these are three-acre sites throughout the project. Secondly, the conflict is not between the "District" and The Estates at Fairway Pines, but between the "District" and the Pines Development Group that did and is responsible for the original Fairway Pines project. According to Mr. Overholser, Commissioner Batchelder's comment allows the "District" to hold this project hostage to the conflicts they are having over something not related to this at all.

Commissioner Batchelder clarified that if the Commissioners were to back off the conditions of the original motion of approval that were signed, they would be overturning a previous Board's action. It is his opinion that it is not the County's role to resolve the conflict; that the developer for The Estates has other opportunities to resolve the conflict.

Mr. Overholser argued that by taking that position the County would be allowing another entity, the District, to take an arbitrary stand to disagree. He maintained that it was not the County accomplishing anything at the meeting today, but someone else. If the court rules that the District's decision is arbitrary and capricious, then the County will have allowed another entity to make its decisions.

David Reed, attorney for the "District," provided the Commissioners with a binder titled "Relevant Documents and Communications, RE: Fairway Pines Sanitation District, The Estates at Fairway Pines" (Exhibit C.2-1). He disagreed with Mr. Overholser's statement noting that, in fact, the conflict is with Pines Development *and* The Estates. Mr. Willey chose

to construct infrastructure within The Estates after being admonished by the "District" that he was proceeding at his own risk. As a result, the sewer infrastructure is in the ground, not approved or inspected by the "District" in accordance with the requirements of the admitting resolution in accordance with the PUD. It is the position of the "District" that there is a default under the PUD agreement, paragraph 8, that sets forth how the infrastructure is to be constructed. There is a violation in the "District's" opinion, thus also a default with the County, as well. According to Mr. Reed, the "District" has tried to negotiate in good faith with the developer. The "District" set out a number of requirements in June 2004 that needed to be met in order to negotiate a service agreement. Subsequently, the "District" pared back the requirements specifying only two that needed to be met before working out the terms of a service agreement: inspections of manholes and as-built drawings. Mr. Willey informed the "District" that it had the as-built drawings when, in fact, it did not. He also informed the "District" that Pines Development was financially unable to do the manhole testing. The "District" feels that it has attempted to negotiate in good faith with the developer and would be happy and able to provide service at such time as the reasonable requirements imposed by Board of Directors are met. It is the "District's" belief that the ISDSs violate the PUD agreement; thus, if the Board of County Commissioners is persuaded to go with the individual septic systems, then the PUD would need to be amended.

Mr. Willey challenged Mr. Reed's comment regarding the financial situation of Pines Development. He pointed out that Pines Development worked for a year to a year and a half to satisfy the "District," which they were never able to do. He continued to discuss the details of the disagreement and concluded by saying that if the Commissioners take a position to support the "District," "...they are being held up without a gun."

To a question from Commissioner Westfall as to whether the conditions were only for The Estates, David Reed replied, "No." The "District" believes it is performing its fiduciary responsibilities to the taxpayers of the district and is concerned about the function of the "District."

Carl Conti added that the "District" has the authority to tailor a service agreement based on due diligence and/or experience with an applicant and noted that the list of requirements continues to grow because the "District" keeps discovering errors and omissions.

Commissioner Batchelder clarified with Mr. Moberg that because the preliminary plat had been approved with nine conditions, the process for changing those conditions would be to amend the preliminary plat. He further clarified that where the County has a request from the developer of The Estates to change one of the conditions of the preliminary plat, the service agreement with the sanitation district, the procedure would be to amend the preliminary plat first.

Commissioner Batchelder concluded the discussion by noting that the requests should go back through the Planning Commission process to amend the preliminary plat and then returned to the Board of County Commissioners, as opposed to a last minute change without review by the Planning Commission.

M/S/P—Motion was made by Commissioner Batchelder and seconded by Commissioner Albritton to concur with the Planning Commission recommendation to deny approval and subsequently to approve Resolution 2005-050 as presented. There was no further discussion. Motion passed unanimously.

11:20 Commissioner Batchelder took a brief recess and reconvened at 11:27:

E. 11:27 Friends of the Ouray County Fairground 501(c)(3) Update:
(Originally scheduled for 11:00 a.m.)

Dick Bjurstrom with the Friends of the Fairground (FOF) provided a monthly update to the Commissioners. The Friends had been conducting exit interviews with potential sponsors to provide to the Commissioners, working on finding two new FOF board members to complete the board, attempting to get an intern from the high school, and having preliminary talks with grant writers on the Front Range and locally. He noted that they had also been hearing rumblings of a mill levy.

FOF will be scheduling an appointment with the Fairgrounds Manager for a comprehensive site survey.

Commissioner Batchelder discussed the mill levy issue.

Ms. Hunt alerted Mr. Bjurstrom that the regular Board of County Commissioners meeting on the fourth Monday of September had been rescheduled to September 19, 2005 at the Ouray County 4-H Event Center.

Mr. Bjurstrom concluded by requesting a physical location for an office at the Ouray County 4-H Event Center for the FOF and a computer. The group is setting up a website and would like to have telephones.

D. 11:37 Discussion and Decision regarding eRecording Software for the Clerk and Recorder's Office:
(Originally scheduled for 11:00 a.m.)

Michelle Nauer, County Clerk and Recorder, was present to address the Board. She asked for permission from the Board to allow her to pursue a specific vendor, Aptitude Solutions, for her eRecording Software needs. She noted that in the past she had researched other vendors and found Aptitude Solutions to be the best fit for the County.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to allow her to pursue Aptitude Solutions for the Clerk's eRecording Software. There was no further discussion. Motion passed unanimously.

F. 11:45 Wildfire Plan Update: CANCELLED

Alan Staehle, who was to present an update on the Wildfire Plan, was unable to attend. This will be put on a future agenda.

Commissioner Batchelder discussed a funding source identified by Jack Rowe and asked Connie Hunt, County Administrator, to ask Mr. Staehle to contact Mr. Rowe to discuss this.

B. 11:48 Commissioner/Administrative Reports, continued:

Commissioner Batchelder discussed the following (continued):

- 2) Building permit issues. Contractors have been expressing their concern about the length of time between submittal of plans to the issuance of a building permit. The delay, especially this time of the year, creates problems. A discussion followed as to how to alleviate the delay and it was decided to speak to Greg Moberg, County Planner, later in the day. Commissioner Batchelder noted that one of the builders was concerned about the process and the discussion turned to the possibility of forming a committee of builders and Land Use Department personnel to look at means of streamlining the process.
- 3) A recent housing meeting in Delta dealt with down payment and rehabilitation programs. The housing authorities for both Delta and Montrose are working independently and are not interested in having others on board leaving Ouray County, for now, basically shut out of the program. [1B/2A]
- 4) Region 10 financial issues are still tenuous. For budgetary purposes, Ouray County should look at a 10% to 25% increase in dues for 2006 over that paid for 2005.
- 5) Letter from Randal Fischer following up on a suggestion to pursue an overall assessment of county operations. The Commissioners opted not to take any action at this time and will send a letter of thanks to Mr. Fischer notifying him of this decision but extending the opportunity for him to inform the Board of any specific procedural issues that he feels should be identified for change.
- 6) Upcoming meetings:
 - a. Weed Board meeting on Wednesday at the Ouray County 4-H Event Center
 - b. Purchasing Policy meeting on Tuesday, August 30 at 1:15 p.m.

Commissioner Albritton discussed the following (continued):

- 3) The block party in Colona was successful
- 4) Tri River Shared Budget Meeting in Delta at the Commissioners' office at 10 a.m. on September 1, 2005

Commissioner Westfall discussed the following (continued):

- 2) Would like to have a discussion on the Planning Commission at the work session on October 17. After discussion, it was decided to have a joint meeting with the Planning Commission in December to address concerns.

11:58 Commissioner Batchelder broke for lunch and reconvened at 1:00:

1:00 Executive Session pursuant to C.R.S. Section 24-6-402(4)(b)

Commissioner Batchelder reconvened the regular session and entertained the following motion.

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

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

Pat Crossley, County Attorney

Don Batchelder, Chair

The following were present for the Executive Session: Commissioner Batchelder; Commissioner Albritton; Commissioner Westfall; Connie Hunt, County Administrator; Pat Crossley, County Attorney; and Linda Munson-Haley, Deputy Clerk of the Board.

1:35 The Board of County Commissioners came out of Executive Session and reconvened into regular session:

G. 1:35 Public Hearing – Fisher Canyon Creek Partners Rezoning Request:

Owner's Name(s): Fisher Creek Canyon Partners
Authorized Agent: John Peters
Location: The property is a 72.15-acre parcel located east of County Road 1 and north of Fisher Canyon South PUD in Sections 24 and 25 of Township 46N, Range 9W, NMPM, Ouray County, Colorado
Purpose: Request for Rezoning of 72.15 acres in the High Mesa Zone to the South Mesa Zone

Those present for the public hearing are listed in Exhibit G. Greg Moberg, County Planner, and Pat Crossley, County Attorney, were present for the County. Andy Mueller, attorney, and Eric Lederer were present on behalf of the Applicant.

Commissioner Batchelder opened the public hearing and noted that the Commissioners had before them copies of the Staff Report and a resolution from the Planning Commission recommending approval with conditions (County Exhibit G-1). He clarified with the Applicant that the net increase would add only one unit.

With no further comments, Commissioner Batchelder closed the public hearing.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve Resolution 2005-051 with conditions as presented. There was no discussion. Motion passed unanimously.

H. 1:45 Land Use Item – Fisher Canyon North PUD:

Owner's Name(s): Fisher Creek Canyon Partners
Authorized Agent: John Peters
Location: The proposed development is located in the South Mesa Zone, east of County Road 1 and north of the existing Fisher Canyon South PUD on Log Hill Mesa
Purpose: Request for Preliminary Development Plan Approval of the Fisher Canyon North PUD

Greg Moberg, County Planner, and Pat Crossley, County Attorney, were present for the County. Andy Mueller, attorney, and Eric Lederer were present on behalf of the applicant.

Commissioner Batchelder noted that the Commissioners were in possession of a resolution from the Planning Commission unanimously recommending approval with a condition of a 100-foot setback.

Commissioner Westfall asked for justification of the 100-foot setback. Greg Moberg, County Planner, explained that this would move construction away from the canyon and cause less impact.

Commissioner Batchelder addressed a number of concerns. Weed management needs to be addressed because, although the road will be a County road, the County will not have any responsibility as far as maintenance. A second concern was that the application prohibited livestock but the CC&Rs (Covenants, Conditions and Restrictions) did not. Section 6 of the CC&Rs needs to be amended to eliminate both domestic and commercial livestock. There is also nothing within the CC&Rs to prohibit amendments being made that would be contrary to what the County has required to be in the CC&Rs. A discussion ensued as to how to address these concerns.

Commissioner Batchelder ascertained that concerns addressed by the Division of Wildlife (DOW) and Doug Canright, Planner/Project Manager, had been adequately addressed.

Mr. Lederer agreed to address the livestock issue, allowing domestic livestock, through the CC&Rs.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to adopt Resolution 2005-052 with the condition of a plat note concerning the owners' responsibility for weed control within the road right-of-way within the PUD. There was no discussion. Motion passed unanimously.

Mr. Lederer discussed road work and Commissioner Batchelder asked Ms. Hunt to talk to Chris Miller about the possibility of prepping County Road 1 from the existing pavement going north about 1,000 feet as part of development of the subdivision for the developer who offered to pave it to county road standards. Mr. Lederer noted that they would probably start work in April 2006.

The Commissioners met with Greg Moberg, County Planner, and discussed the previously alluded to concern of permitting delays [see *Commissioner Batchelder's discussion item in Agenda Item B above*]. Builders are experiencing six-week delays from time of submittal. Commissioner Batchelder reasoned that two to four weeks would be acceptable.

Mr. Moberg offered some reasons for delay are incomplete submittals and that Doug Canright is doing land use review on permit submittals, which has never been done before.

Another concern was the actual process of filling out the forms. Commissioner Batchelder asked if the forms could be simplified to expedite the process. The Board discussed tasking the Land Use Department with forming a committee to work on streamlining the process without subverting any of the requirements, and setting timeframes such that applicants could have a reasonable expectation of when they would get their permits. These recommendations would then be presented to the Board of County Commissioners who would adopt them as policy.

Discussions followed as to whether this should be an administrative policy or a Board policy. Mr. Moberg alluded to potential conflicts with a committee of builders/contractors and the Land Use Staff that would require Board resolution. He preferred to work with the Staff to find solutions.

In other matters, Commissioner Westfall requested of Mr. Moberg that, at future meetings where there are requests involving preliminary and final plats, the plats be available at the meeting. Ms. Hunt recommended that Mr. Moberg introduce all land use items as they are presented to the Commissioners and summarize the applications for the Board's benefit.

2:23 Commissioner Batchelder recessed and reconvened at 3:15:

I. 3:15 Public Hearing – Loghill Mesa Fire Protection District:

Owner's Name(s): Loghill Mesa Fire Protection District (District)
Location: Lot 1, Block A, Unit I, Loghill Village, Ouray County, Colorado
Purpose: Request for Approval of the District's proposal to create and subdivide two lots on District property with the intent of selling the lots to raise funds for construction of a new fire station on Log Hill Mesa.

Commissioner Batchelder opened the public hearing and entered into evidence written public comment as Exhibits I-1 through I-8. He explained that because of various factors the Commissioners would be reviewing and acting on an issue that has no case law specific to application of this new law, HB 05-1032. The Board has had discussions with legal counsel and the concern is that, where there is no case law for guidance, the last thing the County and the fire district want to do is to put themselves in the position where this will be decided in the courts. He asked Mike Hockersmith, attorney for the fire district, to sit with Pat Crossley, County Attorney, as joint counsel to ensure that nothing is challenged in court. Based on the County Attorney's input, reading of the District's attorney's input (Applicant Exhibit I-1), and with the understanding that there is no case law, the Board of County Commissioners set a public hearing but confined it to specifically what is outlined in HB 05-1032, Section II, to wit, "...following the public hearing required pursuant to subparagraph (I) of this paragraph (b.5) that all or any portion of the land is not reasonably expected to be necessary for a governmental use or purpose or that the governmental use or purpose will be furthered by disposal of the land..." Commissioner Batchelder explained that he would not deny anyone the opportunity to speak; however, the only testimony the Board would consider would be testimony applicable to the points outlined above. Commissioner Batchelder noted that at the conclusion of the hearing, the Commissioners would detail the procedure they would follow.

Fred McKnight, representative for the Loghill Mesa Fire Protection District (District), outlined the need for and the reasons why the request was being made. He detailed the deficiencies of Fire Station No. 2 explaining that it is a garage that holds two vehicles with no water, and no water in the immediate area, hence, no toilet facilities and no shower facilities as required by OSHA. This also means no space to clean trucks after a fire. The trucks are brought to Montrose requiring them to be out of service for several hours. Truck maintenance in the wintertime requires leaving the doors open to vent the exhaust fumes. There are no firefighting training facilities. He entered into evidence photos of the existing training facility at Fire Station No. 1 (Applicant Exhibit I-2), which was built in 1976 and added, editorially, that it is a firetrap. Mr. McKnight explained that the brush truck is parked at his house from mid-May to October.

He continued to discuss the demographics of Log Hill, emphasizing the high percentage of elderly and retired, and pointed out that Norm Rooker, Chief Paramedic, had reported to the Commissioners the increase in calls this year from that area. Mr. McKnight also indicated discussions of housing an ambulance at the proposed facility once it is built.

Mr. McKnight recalled a recent fire on Linda and Ed Ingo's property and related the details of the inadequate response time because of the location of the vehicles.

The District came before the Board because it wants to build a new safety center. The District owns some land and proposes subdividing the two lots and selling them in order to raise funds to build the new facility. The proponents of the proposal do not think that they could pass a mill levy or a bond issue. Mr. McKnight contended that by sending the request to the Planning Commission, which would then require a two-thirds' majority vote of the people in Unit 1 only, sixty negative votes could kill the proposal. He reminded the Board that the sixty acres are, in fact, owned by every taxpayer in the District and yet the proposal would eliminate them from any voice, whatsoever. He argued that the Board has absolute approval under HB 05-1032 to sell the lots and build the facility and he urged the Board to exercise courage and not compromise.

Randal Fischer, resident on Log Hill Mesa, supported everything that Mr. McKnight said and spoke to the causes and solutions of fire. He looked at the causes of commission and omission, and for solutions, he advocated prevention and suppression. He urged the Board to trust the fire department staff and members and take their advice.

Bill Fugazzi, resident of Log Hill, noted that part of the mission of the fire district is to protect the entire county, not just the part in the fire district. The legislation deals with the public safety of not just somebody in one section of Loghill Village but everyone.

Penny Devin read a letter dated August 7, 2005 from "Concerned Citizens of Log Hill Mesa Fire Protection District" (Public Exhibit I-9), with 302 signatures urging the Commissioners to "consider the positive impact this plan will have on the overall safety and well being of the residents and taxpayers in the entire Log Hill Mesa Fire Protection District" and to "Approve this PUD change now."

Mike Hockersmith, attorney for the fire district, explained that one thing the Board of County Commissioners has to do is to issue findings that the lots are not necessary for a governmental use or purpose and that this will be furthered by the sale of the land. He encouraged the speakers to focus their comments to this end in order to have a record for the future.

Rene Tegtmeyer, Log Hill resident, addressed the need for expansion and the creation of a new fire house and ambulance service. He spoke of at-risk citizens and recounted an incident involving his wife and an emergency situation. He spoke of the demographics of Log Hill and the needs of an aging population for emergency medical and fire services. Mr. Tegtmeyer endorsed what Mr. McKnight had said. Relative to Mr. Hockersmith's request, the proposal to subdivide and sell two lots to pay for the expansion will provide for a governmental function and accomplish it much sooner. The land will not be needed in the immediate future for a governmental purpose. He asked the Board to give the "intent" of the bill more weight than the literal interpretation and expressed his concern over sending the proposal to the Planning Commission to go through the P.U.D. process.

Mr. McKnight spoke again and gave a brief history of the land that was set aside in 1976 for governmental purposes. He explained that the property has sat fallow for many years with its only purpose to raise money for the fire district. He attempted to alleviate concerns of future sales of land.

Don Guillory, president of Fairway Pines Estates Owners Association (FPEOA), read a prepared statement made by the FPEOA Board in support of the fire district's proposal (Public Exhibit I-10).

Janet Pritchett, resident in the fire district, asked several questions of the Commissioners. She asserted that there is a good reason for the District to sell the lots that are not needed and alluded to the possibility of this going to court. According to Ms. Pritchett, there are three-hundred plus people who would pay the attorney fees to protect their safety.

Will Coulter, volunteer firefighter, agreed that the current station is a rat trap and a new station is definitely needed. He hoped the situation could be a win-win situation.

John Rogers, Chief of the Loghill Fire Department, spoke to his feelings on the importance of the fire station. Any fire is not only a county fire but also a federal emergency. There is the potential of a wildfire that could take out 90% of the land and many lives. The highest risk is on Log Hill Mesa with all of the beetle kill and drought conditions. It is not a question of *if* we will have a major fire, but *when*. He explained that proper equipment placement would cut down on response times ensuring greater success. The decisions made today will affect the success of incidents in the future.

Wally McLallen related a personal experience he had a little over a year ago that was eventually diagnosed as a TIA. His wife called 9-1-1 and the Sheriff was the first to arrive. The Ridgway ambulance was otherwise deployed so he had to wait for the Ouray ambulance, which had to pick someone else up first. He subsequently wrote an article in the *Ridgway Sun* on the "golden hour." This is the crucial hour after an emergency when good medical care is vital for successful recovery. It is the supreme duty of a democratic government to provide for the health and welfare of its citizens. To fulfill this duty, the government is given strong powers. There is a duty before this Board to recognize the demonstrated need to serve the safety needs of Log Hill and the rest of the county. He warned that if there was a disaster in the county and it could be proven that the reason nothing was able to be done was because of the lack of access to fire and medical services that this station could have provided, a lawsuit and judgment would be of a size that could break the County.

Sara Coulter commented on the interesting tone and energy put forth and wondered at the assumption that the Commissioners were against the fire station. In her view, no one is against an expanded fire station. The only issue is how to fund that station and that brings in the problem of the lots being sold and other issues brought up by people in Unit 1. Ms. Coulter empathized with the concern that Unit 1 would be making the decision, whereas, the fire department and service area encompass more than just Unit 1. She wondered if there could be a compromise over the decision making.

Frank Starr, a past member and Chief of the Loghill Village Fire Department, stated unequivocally that Station No. 2 needs to be expanded; however, he was concerned about the method of funding it. He questioned the legality of subdividing and resubdividing a piece of property that was subdivided to the maximum density in the mid-1970s and would further increase the density perhaps beyond the legal limit of what is permissible. He explained that green space was lost when it was transferred to Fairway Pines for several holes of the golf course and the density was increased beyond what was originally laid out. Mr. Starr concluded that there are certainly many ways of funding a new station and it behooves everyone to consider other methods besides subdividing.

Sheelagh Williams, Loghill Village resident, agreed with the need for a new fire station but had reservations about the method. Ms. Williams expressed concern over the issues of density and green space. She was especially concerned about a trail that would be impacted by the sale of the land. She agreed that there could be a compromise. [2B/ 3A]

Mr. McKnight spoke again and explained that he had walked the law through the House and Senate and there is no question in the legislature's mind that the Board of County Commissioners has absolute power to authorize the sale of the land. He hastily added that the District would pay for any lawsuit filed against them. Mr. McKnight referred to the 1976

service plan put together by the Loghill Village Parks and Recreation District and discussed its implications in regards to proposed uses for the land in question.

Lloyd Harrin zeroed in on the questions the Board would consider. Will government use be furthered by the disposal of the land? There is no question that it would be. On the question of if it would be needed for other governmental use, he explained that the purpose of the fire station is as a public service center. The only remote chance of other governmental use would be if Loghill and Fairway Pines would incorporate. As far as the density question and the P.U.D., from a realistic standpoint this would affect two lots out of 221 in Unit 1. Mr. Harrin felt that this is the best plan to allow the station to be built. This is an opportunity for the Commissioners to do something for the County and he urged them to make a decision and make it today.

Matt Carrington, Undersheriff for Ouray County and resident of Log Hill Mesa, lent his support to the endeavor. He reasoned that this is an opportunity that should be embraced. He is in the public safety sector and this is a public safety issue. He appealed to the Board to do the right thing and noted that he is in full support of the proposal.

Robert Neel, resident of Loghill Village, referenced the mechanism under Section 6 of the Ouray County Land Use Code that requires Planning Commission review. Mr. Neel read from an email he sent to the Commissioners dated August 17, 2005 (Public Exhibit I-11) concluding with a request to establish a Special Improvement District rather than being a test case for HB 1032. He offered a map showing federal acreage showing the two lots with federal mineral rights (Public Exhibit I-12). He recommended that the Board send the proposal to the Planning Commission for review.

Kathy McLallen observed that no one disagrees that the fire department is needed and wondered why there is such an uproar to sell two lots out of ten acres.

Scott Williams reiterated what others said. He does not oppose the fire station. He explained that last year he would have signed off on a plan that protected the trail. Mr. Williams addressed the relevant questions of governmental need and purpose. Relative to the money to build the fire station, he discussed that there were other ways to raise the money through the sale of improvement bonds or a tax levy. To the question of whether the lots are needed or are surplus, he contended that until the project goes through the normal planning process (an application, Planning Commission review, Board of County Commissioners review and public input) that question is difficult to answer.

Julie Furstenfeld, resident, felt that the proposal was reasonable. She noted that alternative suggestions would take more time and hoped that nothing happened in the meantime.

Rene Tegtmeyer spoke again in agreement with Ms. Furstenfeld. This is a very innovative way to pay for a fire station and guarantees that it will be done now with certainty. It would be done in an unobtrusive way with no tax increase, all in furtherance of a governmental purpose.

Commissioner Batchelder reminded the public once again that the Board was only taking testimony on two points.

Bud Kelvik, resident of Fairway Pines, simplified that this boils down to three points: need, which is obvious; intent of use of the land, the fire station would be the best use for the land; and courage, the Board's lack to do something cavalier and pass this without all of the rhetoric and get it over with.

Bill Fugazzi, resident, spoke about public safety.

Richard Lyon, resident of Loghill Village, pointed out that in trying to determine if the land would be needed for governmental use in the future, the Board should consider that there are sixty other acres.

Melanie Kelvik compared this issue with subdividing land off County Road and Commissioner Batchelder explained that was an exemption process and does not apply in a P.U.D.

With no further public testimony, Commissioner Batchelder discussed the issue with the Board. He reiterated that with the full understanding that there are many people who want immediate action and that this bill was drafted for that purpose, the Commissioners were asked to take oaths to serve the best interests of the public. They realize that whatever action they take they will not make everyone happy but in taking the oath to protect the County's interest they have to balance certain things. He asked for patience.

Mike Hockersmith as the attorney for the District explained that it is his opinion that the statute, on its face, gives the County the power to do what the District is asking it to do after a public hearing and after Findings are made. He presented an option that if the intent is to go to Planning Commission, the Board at the very least should make Findings today that the property proposed to be disposed of, subdivided and sold is in fact furthering a governmental use and remove governmental restriction from the property. Without this, he reasoned, there is nothing that can happen at the Planning Commission stage.

Commissioner Batchelder asked Mr. McKnight to define the specific purpose of the fire district. Mr. McKnight replied that, according to the Bylaws, the purpose is to provide fire protection to every homeowner on Log Hill Mesa. Commissioner Batchelder verified that the purpose is specific to fire protection and does not refer to emergency services such as ambulance. Mr. McKnight concurred and noted that the responsibility for EMS lies with Ouray County.

To a question from Commissioner Westfall concerning the rationale for surplus property, Mr. McKnight explained that last year a group of Log Hill residents was formed to improve safety on the mesa that put together a proposal to subdivide the

property for safety. The group wanted to find something nonobtrusive with the least impact and this was the easiest way to raise the money.

Commissioner Batchelder asked Greg Moberg if there were any requirements in Section 6.13.A or 6.13.B that would impede approval. Mr. Moberg replied that there would need to be a two-third's approval for the Board to take action. He discussed the timeframe of the Planning Commission and if the Commission would be willing to move it forward.

Commissioner Batchelder determined that the property is in the South Mesa Zone. A discussion followed regarding the scope of the two-thirds vote and whether it could be broadened and if the County could take the position that the final plan was not limited to only Unit 1. Ms. Crossley advised that the Board follow the Land Use Code. Mr. Hockersmith discussed that at the time of final plan approval, the County took the position that the final plan was not just Unit 1; it was actually Units 1, 2 and 4, with each having separate covenants. He agreed that the proposal could not go outside the P.U.D. process.

In response to a question from Commissioner Westfall, Mr. Hockersmith replied that there would need to be clarification on the County's part that the remaining lots would continue as governmental.

Mr. McKnight interjected that the District voted as a Board that all the land would remain governmental.

At this point, Commissioner Westfall stated that she was satisfied that the Applicant(s) demonstrated need, that the land is surplus, that there is a need for the fire station, that the use would be for a governmental purpose, and that the use of the funds would be for a governmental purpose.

Commissioner Batchelder closed the public hearing. He summarized that the issue becomes how the Board crafts the action with the Findings and any conditions that are placed on those Findings. Based on testimony, the Findings would be that the governmental use or purpose would be furthered by disposal of the two lots with justification that the governmental requirements on those two lots be released. Commissioner Westfall stated that she had no problem with that.

Commissioner Batchelder continued that in order to protect the integrity of the process to prevent it from being challenged and to meet the provision in the Act, the proposal should go to the Planning Commission and go through the P.U.D. amendment process.

Commissioner Albritton questioned the release of the lots and Commissioner Batchelder pointed out that they are not saleable lots at this point. He noted that they would be releasing a ten-acre parcel of the sixteen-acre parcel from the governmental purpose requirement. Commissioner Albritton explained that her interest is in protecting the county as a whole and she wants as much information as possible to send this on in the most efficient way.

Commissioner Batchelder concluded that, based on comments and testimony that is an issue of public safety and immediacy, the Board could take action to make this subject to P.U.D. amendment and direct the Planning Commission to consider this request at the earliest possible time, superseding other items currently in process. The Planning Commission could consider this and make recommendations to the Board of County Commissioners prior to the thirty-day timeframe for tallying the two-thirds vote. Commissioner Westfall agreed that it needed to go to the Planning Commission in an expeditious manner and be thoroughly reviewed by Land Use with all conditions placed on the plat. The Board directed Ms. Crossley and Mr. Hockersmith to work together to expedite the process. Commissioner Batchelder suggested that the Board could take action immediately subject to ratification of the written Findings.

M/S/P—Motion was made by Commissioner Batchelder and seconded by Commissioner Westfall that, based on testimony, the Board of County Commissioners finds that the properties proposed and the plat presented to the Board outlining proposed Lots B and C meet the requirement that governmental use or purpose would be furthered by disposal of the land; furthermore, based on testimony, the Board of County Commissioners finds that it is reasonable to eliminate the governmental requirements currently imposed by the CC&Rs on said properties; and moreover, the Board of County Commissioners, subject to going through the P.U.D. amendment process required by Section 6 of the Ouray County Land Use Code, requests that the process through the Planning Commission, County Attorney and Staff be expedited to the greatest degree possible, and that Lot 1A retains all restrictions for governmental purposes. By this motion, the Board specifically does not address the validity of the plat. The motion is subject to ratification of written Facts and Findings. Motion passed unanimously.

Roll Call Vote:

Commissioner Batchelder voted in the affirmative

Commissioner Westfall voted in the affirmative

Commissioner Albritton voted in the affirmative

5:25 Commissioner Batchelder took a brief recess and reconvened at 5:35:

J. 5:35 Request for Adoption of Resolution concerning Amendment to Section 9 of the Land Use Code:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to adopt Resolution 2005-042 as presented. There was no discussion. Motion passed unanimously.

K. 5:35 The Board of County Commissioners convened as the Board of Equalization to consider the following request:

1. Request for Approval and Signature on Abstract of Assessment:

Commissioner Batchelder convened the Board of Equalization.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Westfall to approve the Chair's signature on the Abstract of Assessment for 2005 as presented. There was no discussion. Motion passed unanimously.

5:36 The Commissioners reconvened as the Board of County Commissioners and Commissioner Batchelder adjourned this session:

**Numbered exhibits are maintained separately in the County Administrator's office.*

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