

**Resolution No. 2005-055**

**RESOLUTION**

**and**

**FINDINGS OF FACT AND DECISION**

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

**In re Subdivision Request Pursuant to C.R.S. 24-67-106(3)(b.5)  
Loghill Mesa Fire Protection District, Petitioner**

At a regular meeting of the Board of County Commissioner for Ouray County, Colorado, held at the Ouray County Courthouse on the 22<sup>nd</sup> day of August, 2005, there were present:

Don Batchelder, Chairperson; Heidi M. Albritton, Vice Chairperson; Kristi R. Westfall, Commissioner; and Connie Hunt, County Administrator

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

**WHEREAS**, Loghill Mesa Fire Protection has submitted a request for a subdivision pursuant to C.R.S. 24-67-106(3)(b.5); and

**WHEREAS**, the Board of County Commissioners has held a public hearing upon the request in accordance with such statutory provisions and is ready to take action.

**NOW, THEREFORE, BE IT RESOLVED**, that while the requested subdivision requires BOCC approval of an amended final PUD Plat/Plan, the BOCC finds that the requirements contained in C.R.S. 24-67-106(3)(b.5) for the requested subdivision are met, subject to the conditions provided in the Findings of Fact and Decision hereinbelow.

**FINDINGS OF FACT AND DECISION**

**Background**

The public hearing on this matter came before the Board of County Commissioners ("BOCC") on August 22, 2005. At issue is the request by Loghill Mesa Fire Protection District ("DISTRICT") for a 3-lot subdivision of Lot 1, Block A, Unit No. 1, Loghill Village located in the NW ¼, Section 6, T.45N., R.8W., N.M.P.M., County of Ouray, State of Colorado pursuant to C.R.S. § 24-67-106(3)(b.5). The hearing was held to determine: 1) whether the land for the proposed subdivision is not reasonably expected to be necessary for a governmental use or purpose or 2) whether a governmental use or purpose will be furthered by disposal of such land. The hearing was also conducted to determine whether the modification, removal or release of certain provisions of the Planned Unit Development ("PUD") plan and related documents is consistent with the efficient development and preservation of the entire planned unit development.

**Summary of Evidence**

At the beginning of the hearing letters marked as Public Exhibits I-1 through I-8 were admitted into the record.

Fred McKnight appeared as a representative of the DISTRICT. He testified that the purpose of the requested subdivision was to allow the sale of two lots for residential development in order to

raise revenue for the DISTRICT to improve the fire station, thereby increasing fire protection within the district – a benefit to the public. Mr. McKnight further testified that the proposed subdivision is, and the future use would be, consistent with the efficient development and preservation of the entire planned unit development by providing increased fire protection. He also cited multiple deficiencies in the current fire station such as a lack of water in the immediate area; a lack of restroom facilities and shower; no truck washing facilities; poor ventilation; and a lack of parking space. Three photographs of the current facilities tendered by Mr. McKnight were admitted into the record. Mr. McKnight further testified that the DISTRICT did not intend to sell additional lots in the future.

Additional witnesses appeared in support of the DISTRICT's subdivision request. Randal Fischer and Bill Fugazzi focused upon the public purpose addressed by the request. Penny Devon read a letter and petition with 302 signatures into the record and such letter was admitted into the record. Rene Tegtmeyer stated that the sale of the two lots as requested by the DISTRICT would pay for improvements to the fire station, which furthers a governmental function. Various members of the public commented that the DISTRICT's request should be approved by the BOCC because better fire protection was essential, particularly since the Loughill area is high risk for a devastating fire event; the current fire station is inadequate; and alternative financing had been explored previously without success. Some witnesses questioned whether other means of funding fire station improvements were available; whether the proposed subdivision was consistent with the PUD plan; and whether the land would be needed for future governmental purposes. Other witnesses stated that they believed that the County should require the proposal to be reviewed through the process for amending a PUD as provided in Section 6 of the Ouray County Land Use Code to ensure that the requested subdivision was consistent with PUD requirements and to ensure legal defensibility of the BOCC's ultimate decision. The DISTRICT took the position that Section 6 of the Ouray County Land Use Code is inapplicable to the DISTRICT's request, and that only compliance with the procedures as outlined in C.R.S. § 24-67-106(3)(b.5) was required. A map referencing federal mineral rights was admitted into the record.

Mr. McKnight testified that the DISTRICT'S Board had determined that the approximate fifty (50) acres of land remaining subsequent to the requested subdivision would be reserved for governmental purposes. Mike Hockersmith, the DISTRICT's attorney, stated that if approved by the County, the Unit 1 covenants would continue to restrict the remaining acreage to governmental use.

### **Findings of Fact**

1. C.R.S. § 24-67-106(3)(b.5) allows a governmental entity, such as the DISTRICT, which holds land set aside for a governmental purpose within a PUD to subdivide the land, remove such land from PUD Plan or related documents'-imposed limitations or sell or otherwise dispose of the land with approval of the Board of County Commissioners following the procedures and in accordance with the criteria set forth therein.
2. The required notice requirements have been met.
3. In addition to the requirements of Section 6.13 of the Ouray County Land Use Code to amend a PUD, in order to subdivide land in accordance with C.R.S. § 24-67-106(3)(b.5), to modify the PUD and/or remove PUD-imposed limitations, the County must find that:
  - a. The land is not reasonably expected to be necessary for a governmental use or purpose; or
  - b. The governmental use or purpose will be furthered by the disposal of the land; and
  - c. The future use of the property shall in all other respects be consistent with the efficient development and preservation of the entire planned unit development and with the plan.

4. The subdivision requested by the DISTRICT meets all criteria set forth in C.R.S. § 24-67-106(3)(b.5) based upon the documentary evidence and testimony presented in this matter.

**Decision**

For the foregoing reasons, the Board of County Commissioners hereby determines that the DISTRICT's requested subdivision meets all criteria set forth in C.R.S. § 24-67-106(3)(b.5) and hereby removes any PUD Plan and related document limitation on the governmental use and purpose, including density heretofore restricting use of the proposed new Lots 1B & 1C, which would thus allow one single-family residential use and structure per new lot. The remainder of Lot 1A, consisting of approximately fifty (50) acres, shall remain restricted to governmental use and purposes in accordance with the PUD Plan and related documents. This decision is conditioned upon further BOCC review and obtaining final BOCC approval of an amended Final PUD Plat/Plan after completion of the procedures contained in Section 6.13 of the Ouray County Land Use Code. The BOCC specifically reserves the right to reconsider the DISTRICT's request following completion of the procedures contained in Section 6.13 of the Ouray County Land Use Code.

Introduced, read and passed this 22<sup>nd</sup> day of August, 2005.

Voting in the affirmative: Don Batchelder, Heidi Albritton, and Kristi Westfall  
Voting in the negative: none

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2005.

BOARD OF COUNTY COMMISSIONERS  
OF OURAY COUNTY, COLORADO

Attest:

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

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

\_\_\_\_\_  
Heidi M. Albritton, Vice Chair

By:

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

\_\_\_\_\_  
Kristi R. Westfall, Member