

**Resolution 2005 – 059**

A RESOLUTION ADOPTING A PRELIMINARY ORDER APPROVING SPECIFICATIONS AND OTHER MATTERS FOR THE EAGLE HILL RANCH LOCAL IMPROVEMENT DISTRICT.

WHEREAS, at the request of property owners in Eagle Hill Ranch, on June 13, 2005, the Board of County Commissioners of Ouray County adopted Resolution No. 2005-033 creating the Eagle Hill Ranch Local Improvement District after notice and hearing; and

WHEREAS, notice of the adoption of such resolution and of a hearing pursuant thereto as required by law, was duly given by publication and by notices sent to affected property owners; and

WHEREAS, the United Companies have indicated the ability and willingness to pave the roads within Eagle Hill Ranch in October, 2005 on the same terms as are provided in an existing paving contract between Ouray County (Loghill Village Local Improvement District) and United Companies for the paving of roads within Loghill Village; and

WHEREAS, the Board has been presented with a Petition signed by the owners of thirty of the forty lots to be assessed within the District (who will bear three quarters of the cost of the improvements), including all three of the lots within the Sweetwater at Ridgway subdivision, requesting that the Board (i) approve the use by the Eagle Hill Ranch subdivision paving project of the plans and specifications previously used on the Loghill Local Improvement District paving project, (ii) order the improvements in accordance therewith and as requested in the petitions, and (iii) place on the ballot in November 2006 the question of the District's authority to borrow funds to pay for the same; and

WHEREAS, in order to take advantage of the substantial savings of both time and money which will result from doing the paving project during the fall of 2005 instead of delaying the work, the Eagle Hill Ranch Homeowners Association has taken agreed to temporarily fund the paving project on behalf of the District until the District is properly authorized to fund the project itself; and

WHEREAS, upon voter approval of borrowing by the District, First National Bank - Ridgway has agreed to make available to the District funding on the terms set forth in the attached commitment; and

WHEREAS, pursuant to notice, a hearing was held by the Board on September 12, 2005 at which the Board did not receive written protests representing the owners of property which would be assessed more than fifty percent of the cost of the contemplated improvements; and

WHEREAS, given the receipt by the Board of the aforesaid Petitions of the affected property owners, and the absence of sufficient written protests, the Board is required to order the proposed improvements in accordance with the Petition pursuant to C.R.S. 30-20-603(3)(b); and

WHEREAS, at the aforesaid hearing, the Board reviewed the Petitions, the preliminary plans and specifications and related materials for the proposed project, and also took public input on such preliminary plans and specifications; and

WHEREAS, the Board finds that each property unit within the Eagle Hill Ranch Local Improvement District will enjoy approximately equal benefit from the paving of the subdivision roads, whether or not the principal access to any lot is from those streets, in that: (i) paved roads throughout the subdivision likely will increase the value of all properties within the subdivision regardless of size, use, present value or location; and (ii) paved roads within the Subdivision will materially improve the health, safety and welfare of all properties within the subdivision, regardless of size, use, present value or location, by reducing dust and airborne contaminants presently generated by unimproved roads and by improving the safety of both vehicles and pedestrians using the roads within the District; and (iii) paved roads within the subdivision will materially reduce the inconvenience of travel within the subdivision and the value of common elements within the subdivision, including open space and the clubhouse facilities, for the equal benefit of all properties, regardless of size, use, present value or location;

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Ouray County as follows:

1. The Board of County Commissioners of Ouray County hereby finds that all matters asserted in the foregoing whereas clauses have been duly established and that all notices have been duly given and all hearings duly held as required by law.

2. Resolution No. 2005 - 033 is hereby amended, clarified and supplemented as follows:

A. The first sentence of Section 2 of said Resolution 2005-033 is hereby amended to clarify the definition of the area within the District which shall include all properties located within the Eagle Hill Subdivision (all phases and filings) and the Sweetwater at Ridgway Subdivision, according to the official plats thereof. All other provisions of Section 2 shall remain unchanged;

B. Section 7 of said Resolution 2005-033 is hereby amended to read as follows:

All District improvements shall be paid from funds borrowed by the District from First National Bank - Ridgway. Such borrowed funds shall be used to reimburse the Eagle Hill Ranch Homeowners Association for expenditures made by it in connection with the paving project. Borrowed funds shall be repaid by the District from assessments imposed by the District against all lots within the District except for property designated exclusively as green belt, open space or designated and used solely for community, public or quasi-public purposes and on which all private residential, commercial or industrial development is prohibited. The question of whether to authorize such indebtedness to pay for road improvements, and whether to increase property taxes or assessments to repay such indebtedness, shall be submitted in the November, 2006 election only to registered electors within the District.

C. All references in said Resolution 2005-033 to “bonded indebtedness” are hereby deleted and the phrase “District indebtedness” is hereby substituted therefore.

D. The first sentence of Section 8 of said Resolution 2005-033 is hereby amended to read as follows:

The Eagle Hill Ranch Homeowners Association, on behalf of the District, and in order to take advantage of current favorable prices for the contemplated work, shall advance all costs, including costs incurred by the County, in connection with the approval and construction of the proposed District improvements and the election on the proposed District indebtedness (including but not limited to engineering costs to prepare specifications, estimates, supervise construction, etc., road base improvements, paving, legal and other administrative expenses, election costs, publication of notice, etc.).

All other provisions of Section 8 shall remain unchanged, except as modified by this resolution.

E. The deadline established by Section 10 of said Resolution 2005-033 is hereby amended to read January 1, 2008.

3. Pursuant to C.R.S. 30-20-603(5) and C.R.S. 30-20-603(3)(b), the Board makes the following preliminary order regarding the Eagle Hill Ranch Local Improvement District proposed improvements:

A. The Board hereby approves the use by the Eagle Hill Ranch Local Improvement District of the plans and specifications used by the Loghill Local Improvement District as requested by the Petition, as modified by Resolution 2005-033, provided that such plans and specifications may be amended as necessary for use by the Eagle Hill Ranch Local Improvement District;

B. The cost estimate for said work (\$433,000) is hereby approved as having been formulated in good faith on the best information available. Such cost estimate shall be subject to adjustment to reflect amounts actually expended to complete the project;

C. The materials to be used in completing the improvements shall be in accordance with Resolution 2005-033 and with the preliminary plans and specifications unless the Board orders otherwise by subsequent order;

D. All properties located within the previously defined boundaries of the Eagle Hill Ranch Local Improvement District (that is, all lots within the Eagle Hill Ranch, all filings, and within the Sweetwater at Ridgway subdivisions), together with any and all subsequent subdivisions of any property contained within the District or other lot splits and/or boundary adjustments therein will be assessed for the cost of the improvements. Lots designated exclusively as green belt, open space or designated solely for community, public or quasi-

public purposes and on which all private residential, commercial or industrial development is prohibited are excluded from the District. For purposes of any assessment by the District, each lot within the subdivision shall count as a separate unit and as such shall be separately assessed.

E. Subject to voter approval of District indebtedness, the cost of the improvements and all other expenses incurred by the Eagle Hill Ranch Homeowners Association shall be reimbursed in full by the District upon satisfactory completion of the improvements. Proceeds for payment shall be obtained by the District borrowing from First National Bank - Ridgway on substantially the terms set forth in the attached financing commitment for the full cost of all improvements together with all administrative expenses associated with the creation, funding and operation of the District.

F. Any indebtedness to fund the improvements shall be fully repaid by equal assessment of each property unit within the District, the Board having determined that each property unit within the District will enjoy approximately the same benefit, regardless of size, present value or location.

G. The amount of the assessment payable by each property unit within the District shall be determined by dividing the total cost of the project, including all related or ancillary costs, by the total number of units within the District. Subject to adjustment upon receipt and acceptance of bids, or upon further action of the Board of County Commissioners, the amount of the assessment of each property unit within the District is presently estimated to be \$10,825 if paid in a lump sum. Property units within the District shall be given the opportunity to pay their assessment in up to fifteen equal annual installments.

H. In the event any development is submitted to Ouray County after the date of this Resolution, which requests County approval of any PUD, subdivision, lot split, exemption or other land use approval, and which proposes access via roads located within the District, approval of access to such development by roads within the District shall not be given by Ouray County until the proponent of such development has agreed to: (i) pay to the District the proportionate share of the costs of paving the District roads calculated as though the proposed development had existed and been made a part of the District prior to the adoption of this Resolution; (ii) repair any damage done to District roads by or in connection with the proposed development, specifically including but not limited to damage due to construction or construction traffic; and (iii) has provided Ouray County security in an amount and form acceptable to the County and the District to ensure payment of all obligations imposed pursuant to the foregoing provisions.

i. For purposes of the foregoing provision, the developer's share of the paving cost shall be calculated by multiplying the per lot assessment actually imposed by the District on property within the District by the total number of lots approved to be developed with access by roads within the District. Such funds shall be collected from the developer before the developer shall be permitted any use of the roads within the District for any purpose

including access to the developer's property.

ii. Any funds collected from developers pursuant hereto for access to the roads within the District (but not including funds paid for damage to District roads) shall be placed in the District's accounts and shall be used by the District either to prepay District indebtedness (in which case the amount of future installments of the assessment thereafter shall be reduced accordingly) or to pay for repairs, maintenance and upkeep of the District roads. In the event funds received from any developer are used to reduce indebtedness, with a resulting decrease in future installments of the assessment, any property which prepaid its assessment in full (including the developer property which has prepaid its full pro rata share of the cost of the paving project) shall be entitled to a proportionate refund of its prepayment of the full assessment. No developer shall receive any refund until the developer has fully discharged all obligations it may have to repair damage to District roads.

iii. No provision contained herein shall be deemed to grant any access on or across the roads within the District it being the County's intention that such access will exist only by agreement between the developer and Eagle Hill Ranch. Access shall not be unreasonably withheld.

4. The question of whether the District may contract indebtedness in order to reimburse the Eagle Hill Ranch Homeowners Association for the cost of road improvements (including all administrative and other costs related thereto) and whether to increase property taxes or assessments to pay for such indebtedness shall be submitted to the registered electors within the District. The Board hereby directs that the question be placed on the ballot in the November, 2006 election stated as follows:

Shall Ouray County debt (for the Eagle Hill Ranch Local Improvement District) be increased by up to \$433,000 with a maximum repayment cost of \$625,898.40 for the purpose of reimbursing the Eagle Hill Ranch Homeowners Association for all costs incurred by it in connection with paving and constructing necessary improvements to the roads serving Eagle Hill Ranch (including costs necessary or incidental thereto) by the borrowing of funds on such terms as the Board of County Commissioners may direct, which borrowing shall be repaid from revenues collected from special assessments imposed against the benefited properties located within the District over a period of fifteen years (and from any other funds which may be lawfully pledged to the repayment of such debt)?

Yes \_\_\_\_\_ No \_\_\_\_\_

5. The County Clerk of Ouray County, as the designated election official, shall comply with all constitutional and statutory requirements for the submission of this issue to the electorate including notice to registered electors and preparation and publication of all ballot notices and other materials as required by state law.

6. It is contemplated that all administrative costs associated with the management of the District and/or the collection of revenues and payment of expenses, including repayment of bonds or

indebtedness, will be borne by the properties within the District. The assessments which will be imposed within the District shall be sufficient to fully reimburse the County for all such administrative costs. Determination of the amount of administrative costs shall be by the County, in consultation with the Eagle Hill Ranch Homeowners Association. In the alternative, the County and the District may contract with the Eagle Hill Ranch Homeowners Association to perform administrative work for the County.

7. In the event that all actions necessary to approve and authorize the improvements proposed to be done by the District are not completed by January 1, 2008, this resolution shall automatically be rescinded without further action by the Board of County Commissioners.

8. If any provision of this resolution, or if the application of this resolution to any person, entity or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this resolution which can be given effect without the invalid provision or application, and to this end, the provisions of this resolution are to be severable.

9. This or any other Resolution and the plans, specifications and other matters approved or specified herein, may be amended by the Board of County Commissioners of Ouray County at any time.

10. The Board of County Commissioners of Ouray County hereby declares that this resolution is necessary for the preservation of the public peace, health, safety and welfare and that it therefore shall become effective immediately.

11. In passing this Resolution, the Board of County Commissioners has made every effort to comply with the requirements of the statutory provisions authorizing the formation of a local improvement district. In the event, despite such effort, this Resolution fails to comply in any non-substantive or technical way with any requirements of the law, such noncompliance may be corrected by supplemental Resolution adopted by the Board of County Commissioners. In the event such a supplemental Resolution is adopted, this Resolution shall be read as though such changes had been incorporated in its original text. To the extent that any provision of this Resolution is inconsistent with any prior resolution of this Board, the provision of this Resolution shall control and the prior resolution shall be deemed to have been amended thereby.

12. In the event of any conflict between this Resolution and Resolution 2005-033, the terms of this Resolution shall prevail.

READ, PASSED AND ADOPTED this 12<sup>th</sup> day of September, 2005 by the Board of County Commissioners of Ouray County, Colorado. Member Albritton recused herself because of a potential conflict given that her family owns property which may have access via the streets of Eagle Hill Ranch.

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Chairman Batchelder, Chair

Attest:

Recused

Heidi M. Albritton, Vice-Chair

Linda Munson-Haley,  
Deputy Clerk of the Board

Kristi R. Westfall, Member