

The Board of County Commissioners met in regular session on May 8, 2006. Those present for the session were Heidi M. Albritton, Chair; Don Batchelder, Vice Chair; Kristi R. Westfall, Member; Connie I. Hunt, County Administrator; Mary Deganhart, County Attorney; and Linda Munson-Haley, Clerk of the Board.

- **Note – This meeting was recorded for reference purposes.**

9:00 Commissioner Albritton called this session to order:

A. 9:00 Call to the Public:

The "Call to the Public" agenda item is a time when the public may bring forth items of interest or concern. No formal action may be taken on these items during this time due to the open meeting law provision; however, they may be placed on a future posted agenda if action is required.

Keith Meinert, informal representative of the skiing community, addressed the Board regarding a potential issue on Miller Mesa. He discussed the historical use of a parking area for outdoor recreationists and the importance to not only county residents but to visitors, as well. There is a new owner of the land where the parking area is located. Mr. Meinert wanted to encourage the Commissioners to be mindful of the needs for a parking area whether it remains in the same location or in an alternative location.

Robert (Bob) Poir, owner of the land in question, was present and explained that he was proposing to donate a section of his parcel to the County for parking in exchange for driveway work to his house. The area in question is about .28 acre currently and he would consider expanding it to accommodate the needs of the recreationists.

Joe Ryan with the San Juan Hut System reiterated Mr. Meinert's request and noted that he has seen between 25 and 30 ski vehicles in the lot at a time. The condition of the parking area is often a quagmire and it will need gravel.

Mr. Poir indicated that he would be fencing his land off for horses and would like to know about the County's plans so he could move ahead.

The Board asked Doug Canright, Planner/Project Manager, to coordinate with the interested parties to set up a meeting.

B. 9:30 Commissioner/Administrative Reports:

Mary Deganhart, County Attorney, had nothing to discuss:

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

Connie Hunt, County Administrator, discussed the following:

- 1) Request from Noble Heller of the Pave 24 group to meet with the engineer. Pave 24 would pay for the engineer's time. The Board agreed if there was no cost to the County, but asked to be kept in the loop.
- 2) Request from the Rodeo Association offering to buy panels and asked to keep the income from boarding.
- 3) Revised timeline from Greg Moberg, County Planner, on Code revisions.
- 4) Road Committee meeting
- 5) A copy of one stage of the proposed lease purchase based on 4 years and 5 years. Will discuss further at work session tomorrow.

Commissioner Westfall discussed the following:

- 1) Complimented Chris Miller, Road Superintendent, on a job well done.
- 2) Voting proxy for CCI steering committees. In a past meeting, the Board decided not to choose a proxy but decided it could be handled on a case-by-case basis.
- 3) Tri-County meeting on June 1 and Summit South June 22.

Commissioner Batchelder discussed the following:

- 1) Email from Richard Wojciechowski stating dissatisfaction with the County spending huge amounts of money putting public notices in the *Plaindealer* and asking for options. The County Attorney will prepare a formal response.

Commissioner Albritton discussed the following:

- 1) Meetings last week – the Road Committee, Weed Committee and Fairgrounds Advisory Committee (FAC) – all went well.
- 2) At the Fairgrounds Advisory Committee meeting, Dick Bjurstrom did a presentation on the Friends of the Fairground, and Susan Long gave a presentation and introduced Amanda Flowers, new assistant Fairgrounds Manager. The FAC is increasing the County Fair by one day and adding new events. The Rodeo Association is adding a race on the 4th of July. She said that it was good to see the enthusiasm. There were requests regarding dirt and arena lights. The Board directed Ron Durham to inspect the area for broken bulbs, etc. and to look at alternatives for lighting.
- 3) Montrose County is cutting the funding for the 4-H program and will no longer have an agent there. This will affect Ouray County because the Montrose County agent is the same for Ouray County, and Ouray County may have to provide extra funds to keep the program.

- 4) Attended the annual Public Lands Partnership meeting in Montrose. It was well attended by all counties. Ouray County won an award from the White House for Smart Planning that will be displayed at the Courthouse.

C. 9:45 General Business:

1. Request for approval of warrants:
2. Request for approval of May 1, 2006 minutes:
3. Request for approval and Chair's signature on the following weed department items:
 - a. Acceptance of Purchase Order with the State of Colorado in the amount of \$5,000 for Ouray County to spray noxious weeds on State right-of-way:
 - b. Intergovernmental Agreement between the State of Colorado and Ouray County for Cooperative Weed Management (*ratification*):
4. Request for approval of refunds for taxes paid per the Treasurer's request as follows: (*a zero budgeted line item was established for these items*)
 - a. Anderson for Hastings Minerals: \$ 411.16
 - Anderson for Kings Gold King & Flagstaff: 520.00
 - Land Title Company: 220.00
 - Total: \$1,151.16
5. Request for abatement of personal property taxes that are uncollectible in the amount of \$659.56 per the Treasurer's request:
6. Request for adoption of Proclamation 2006-001 proclaiming the Week of May 14 through 20 as "Emergency Medical Services Week":
7. Consideration of letter to Representative Salazar, Senator Allard, and Senator Salazar rendering Ouray County's support as requested by the Town of Telluride for an Act of Congress to name a local 13,150-foot mountain peak as Byron White Peak:

M/S/P—Motion was made by Commissioner Batchelder and seconded by Commissioner Westfall to approve Agenda Items 1 through 7 as indicated on the agenda. Discussion. The County Attorney asked to include the statutory references for Agenda Item C-4, C.R.S. 39-10-114, and Agenda Item C-5, C.R.S. 39-10-114(2)(a), if taxes are uncollectible after one year after they become delinquent they will be cancelled. Commissioner Batchelder amended his motion to include the statutory references, which was seconded by Commissioner Westfall. There was no discussion. Motion passed unanimously. Connie Hunt asked to amend Item F of the minutes. Commissioner Batchelder moved to amend the motion to amend the minutes per Ms. Hunt's request and Commissioner Westfall seconded the motion. There was no further discussion. Motion passed unanimously.

9:55 Commissioner Albritton recessed briefly and reconvened at 10:00:

D. 10:00 Department Heads/Elected Officials Meeting:

Norm Rooker, Chief Paramedic, discussed the following:

- 1) The call volume is picking up. March is 20% behind the 2005 record year; however, there were five runs yesterday.
- 2) Scott Tuning regrettably resigned due to personal considerations and moving out of state. He explained that EMS had advertised extensively when advertising for the position when Scott Tuning applied. There was not much response and Mr. Rooker felt it was related to salary. This time, after consulting with the Physician Medical Director for Ouray County EMS and the County Administrator, the decision was made to fill the vacancy from within and Steve Lance was hired as Training Officer.
- 3) Short-term plans include sending Kim Mitchell, EMTI and Deputy Chief, to paramedic school, and putting in for a fourth paid position in his budget. If approved, he would like to hire one of the people in training now.
- 4) As a long-term plan, Mr. Rooker wants to put qualified people who plan to stay, in open positions and indicated that a competitive salary would be an important incentive to accomplish the plan. Ms. Hunt defended County salaries noting that they were competitive.
- 5) Thanked the Board for passing a proclamation declaring May 14 to May 20 as National Emergency Medical Services Week. In conjunction, EMS purchased educational coloring books to be distributed to all K-4 students in both Ouray and Ridgway. Arrangements were also made with Congressman John Salazar's office to have the American flag flown over the U.S. Capitol in honor of OC EMS week. The flag, along with the proclamation, will be displayed in the lobby of the Courthouse. He handed out pins to all present.
- 6) Just completed the second First Responder Class and EMS has added five new first responders.

- 7) Finished with the education portion of the current EMT class and six strong candidates will take the national exams at the end of the week.
- 8) Last month EMS was invited and agreed to participate in a tri-county seatbelt and infant car seat education and compliance project. Grant funding is pending and he will know by mid-June if it is a go.
- 9) OC EMS will be hosting a basic vehicle extrication class this Memorial Day weekend and he suggested that revenues go to the Road and Bridge Fund for hauling the destroyed vehicles to Recla Metals in Montrose.
- 10) As LEPC representatives, he and Sheriff Mattivi were approached to do a flow study to determine what hazardous materials are passing through Ouray County. He will present a formal proposal to the Board.

Chris Miller, Road Superintendent, discussed the following:

- 1) Crews have been completing "magging" the roads
- 2) Completed avalanche training
- 3) Busy working with the Town of Ridgway on the yard and with Cornerstone for improvements
- 4) The status of jeep roads will be put on the County website

Sheriff Mattivi discussed the following:

- 1) A new deputy started last week and there is still one position open. He noted that he is in the same position as EMS regarding salary competitiveness and what he can offer potential deputies
- 2) Made it through another prom with the only problems occurring on private property.
- 3) The department has a new report writing system to create more professional reports. All of the deputies will be trained to operate the system.
- 4) There were 47 traffic contacts with 25 citations, 1 car impounded and 2 DUI arrests.
- 5) There were three agency assists and one drug assist with the Montrose Drug Task Force
- 6) Deputies responded to four alarms for unoccupied houses in the rural areas of the county. This happens on a regular basis and takes a deputy out of service for about an hour each time. He may approach the Board to set up a resolution to initiate a fee schedule for responding to home alarms. He suggested that the first response would be free, but each subsequent response would carry an increasingly higher fee.
- 7) Other issues involved water disputes, trespassing, and family disputes with only one domestic.
- 8) There are two follow-up investigations for theft and the Investigator, who is also doing patrol, is trying to keep up.
- 9) Linda Williams kept dispatch fairly busy with complaints of trespassing regarding her private property.

Greg Moberg, County Planner, discussed the following:

- 1) Building permits are a third less than last year but fees are way up.
- 2) He and the County Attorney are working closely with Cornerstone on final plat.
- 3) The Dr. Theobald study was sent out to all stakeholders. He is working to set a date with Dr. Theobald to meet with the Commissioners to get approval to set indicators. Commissioner Batchelder suggested making it a public meeting, possibly in the evening, so the public could be in attendance.

Paulette Crabb, Case Worker with Social Services, discussed the following:

- 1) The low energy assistance program wrapped up for the season. The department helped 125 families with most families receiving approximately \$900 in assistance.
- 2) The caseload has held steady.
- 3) The legislature has made it possible to provide substantial raises to people on disability, and senior citizens now get assistance from the time of application.
- 4) There is a child-care crisis in the county. Social Services has offered to help defray the costs for fencing and getting homes up to par to encourage more daycare facilities.

Ron Durham, Facilities Manager, discussed the following:

- 1) Getting all of the equipment set up for summertime, swamp coolers checked out, and working on leaks at the Ouray County 4-H Event Center.
- 2) Been busy helping set up at the Ouray County 4-H Event Center for events
- 3) Otherwise, maintenance as usual

Sherry Peck, Human Resources Representative, discussed the following:

- 1) Three new people will be starting with the County this month.
- 2) She put an ad in the newspaper for the Associate Planner position that Doug Canright is leaving.
- 3) Some department heads have not done their employee evaluations and she encouraged them to get them to her in a timely manner.
- 4) The new purchasing policy is working well.

Ron Mabry, County Weed Coordinator, discussed the following:

- 1) The Weed Department keeps growing. He started spraying last week.
- 2) Working with a group of landowners around Billy Creek to start spraying oxeye daisy
- 3) Met and talked with landowners on the leafy spurge problem

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

- 1) The list of subdivision plats is almost completed.
- 2) Currently, in house, everything has been converted although not on the website yet.
- 3) She has several new users who are paying a monthly fee to access the records
- 4) The Department of Revenue issued a ruling that is very controversial and Clerks are upset. Every transaction in the Clerk's Office now requires proof of a driver's license. She will put out a press release notifying the public. She discussed the plight of immigrants with this new ruling.
- 5) The Clerk's Staff will return to working five 8-hour days beginning June 1. She broached the subject of changing the Courthouse hours indicating that her Staff needs a half hour in the morning and a half hour in the evening to open and close. She recommended that the Clerk's Office be open to the public from 8:30 a.m. to 4:30 p.m. A discussion followed. Commissioner Albritton agreed as long as notification is made to the public. Commissioner Batchelder suggested trying it on a temporary basis and assessing to see if it is creating any problems.
- 6) The Hart contract has been signed and she is waiting for the new election counting equipment. All expenses were covered by the grant from the Secretary of State's office. Ouray County will be HAVA compliant once that piece is operational.

Cheryl Roberts, Public Health Director, discussed the following:

- 1) Area commissioners, county administrators and department heads met to put together a collaborative board to deal with issues of public and environmental health.
- 2) She is working on the pandemic flu and once school is out will have more time to devote to the issue.
- 3) Public Health has received one complaint of possible West Nile Virus in a prairie dog colony out of Ridgway. The virus has been documented in San Miguel County and Mesa County.
- 4) The Tobacco Coalition, which is still actively recruiting members, will have its first meeting tomorrow. The coalition will also address drug problems in the county.

Ramona Radcliff, County Treasurer, discussed the following:

- 1) With Alpine Bank's takeover, she received 19 bank statements at the end of the month. She usually gets five.
- 2) This month saw a collection of over \$4 million in taxes representing 61.3% for the year.

Bob Larson, County Surveyor, discussed the following:

- 1) County Road 17 situation call from Merlin Rawson
- 2) The Forest Service is planning work in the Ironton area on the TPL lands and has asked him for information.

Susie Mayfield, County Assessor, discussed the following:

- 1) The auditor is here today getting information for this year's audit.
- 2) Off-year evaluations were sent out
- 3) Cornerstone applied for a forestry/agricultural designation at the recommendation of the Forest Service. She did not grant it and it raises the value to about \$13 million.
- 4) There were few calls regarding NOV's
- 5) The Beaumont abatement

Susan Long, Fairgrounds Manager, discussed the following:

- 1) Revitalized Fairgrounds Advisory Committee
- 2) Sent out a Fairgrounds/Event Center calendar to all department heads and elected officials noting that it is a work in progress.
- 3) New assistant, Amanda Flowers, was hired. She helped Friday night with the choir event.
- 4) The next big event is the Ridgway High School graduation on May 29. Michael Elden, I.T., will help with the technical part. There will be a lockout dance afterwards.
- 5) Many proposals for future weddings
- 6) Wants to cull a summertime pool of bussers, servers and dishwashers from the local teen community. the County Administrator advised her to check with the insurance company regarding the hiring of children.
- 7) Booth packages for the county fair will go out this month
- 8) User fee meeting tomorrow morning
- 9) Meeting Wednesday morning on signage for various events
- 10) She met with the promoters of Night Vision
- 11) She had a request to purchase the leftover footing materials and was directed to ask the user groups first, in writing and to get written sign off, and then to handle through the surplus property policy.
- 12) Rodeo Association request that she will discuss tomorrow at the work session

Mary Deganhart, County Attorney, discussed the following:

- 1) Land use issues
- 2) Michelle Nauer interjected that she had talked to Ms. Deganhart about the temporary use permit for the Fairway Pines Golf Partners who are now requesting a liquor license.

Connie Hunt, County Administrator, discussed the following:

- 1) The Board approved and signed direct deposit agreements with Alpine Bank. Sherry Peck will be getting with everyone to see who wants to sign up.
- 2) Referred to Ms. Radcliff's discussion regarding bank statements and discussed the taxpayer ID number.

Commissioner Batchelder discussed the following:

- 1) He is constantly and increasingly impressed with the organization as a whole and how everyone works together, and offered thanks to all.

11:10 Commissioner Albritton recessed briefly and reconvened at 11:20:

E. 11:20 Pat Willits, Trust for Land Restoration (TLR), regarding the Canyon Creek Brownfields Grant:

1. Presentation and Review of Final Assessment Report, and request for Chair's Signature:

Pat Willits explained that the TLR received \$200,000 to do a Brownfields Assessment in Canyon Creek, which is a little over halfway completed. This is a national program that is out of the EPA's usual regulatory authority to encourage groups to clean up hazmat sites. Phase I of the assessment was just completed and he delivered the report to the Board with an invitation to attend a community meeting on May 16 at 1 p.m. in the Echo Chamber with consultants who helped to prepare the report. He asked the Commissioners to acknowledge receipt of the final report.

M/S/P—Motion was made by Commissioner Batchelder and seconded by Commissioner Westfall to approve the Chair's signature on the Final Assessment Report as presented. There was no discussion. Motion passed unanimously.

He discussed providing the GIS data collected for the assessment to Ouray County.

Commissioner Albritton discussed a complaint she received regarding delays with an application to Land Use. The Board discussed various options including a checklist and directed the County Administrator to talk to Land Use regarding the process including better communication with the applicant.

11:55 Commissioner Albritton recessed for lunch and reconvened at 1:35:

F. 1:35 Land Use Item:

1. Application Request: R&R Ranch Limited Planned Unit Development (PUD)
Owner's Name: R&R Ranch Ouray County, L.L.C.
Authorized Agent: Kent Parkison
Purpose: The applicant is requesting preliminary approval of a subdivision of Lot 7 of Pleasant Valley Slope No. 1 to create a 2-lot Limited PUD.
(Note – this item was continued from the April 24, 2006 Board of County Commissioner's meeting.)

Greg Moberg, County Planner, and Doug Canright, Planner/Project Manager, were present.

Commissioner Albritton explained that this was a continuation of a previous discussion requesting preliminary approval of a subdivision of Lot 7 of Pleasant Valley Slope No. 1 to create a two-lot limited PUD. She explained that the Board was in receipt of a memo from the County Attorney. Commissioner Albritton asked about the issue of nonconforming use.

Mary Deganhart, County Attorney, explained that this particular road, because it was constructed to access parcels not part of the subdivision process, would not have come through the County process. At the time it was constructed it was a legal road and she would suggest that it is a legal road today despite its problems with grade, etc. The language in the Land Use Code on nonconforming uses does not address roads.

Commissioner Albritton asked Ms. Deganhart if she was comfortable that a 60-foot easement was intended.

Ms. Deganhart replied that there is no dispute that there is a 20-foot access easement that runs across what is now open space in Pleasant Valley Vista. The question was whether or not the portion in Pleasant Valley Vista is at least 60 feet, and short of there being a court decree she could not answer that question. There is a lot of indicia that it existed and it is very evident on the Pleasant Valley Vista plat. There is the issue of dedication, but clearly on the map there was a recognition that it existed and an easement granted referencing the 60 feet. Since the 1970s, everyone has recognized that there is 60 feet. She stated that she is comfortable with the evidence, background, and facts that there is recognition that there is a 60-foot easement. She spoke of a note on an old plat of the intention for a 70-foot easement.

Commissioner Albritton asked about the issue of the Land Use Code requiring upgrades to county road standards.

Ms. Deganhart proceeded to explain that the language in the Land Use Code applies to either new roads or new county roads. It does not seem to apply to this type of situation of an existing road accessing existing properties with an additional use. Another important issue is whether the County can require the last person who obtains property along a roadway to bring the road up to County standards when it has been used for a long time in the current condition. There is case law that speaks to the relationship between the impact being caused and what may be required to permit someone to develop property. Certainly, she did not feel that it could be argued that one additional unit would be enough of an impact to require Catamount Drive to be brought to county standards.

Commissioner Westfall asked the County Attorney if there would be any liability if the County were to grant the application because of adding an additional use. She asked what documentation allows for the added use, even though it is one vehicle and one lot, to that easement going across someone else's property, an association property.

Ms. Deganhart explained again that without a court making the determination she would not be able to answer the question. However, there is case law that talks of anticipated and expected use, and the Restatement of Law on easements talks about the implications, particularly if it is a 60-foot easement, as 60 feet implies that there is an expectation of expanded use. There is that kind of information or body of law that supports the added impact. She alluded to language in the road association document that implies there was expectation that there would be additional members.

Commissioner Westfall clarified that she was referring to Pleasant Valley Vista. It is not property owned by the Slope, it is an easement that they have been using and they had prior to Pleasant Valley Vista being subdivided, and will now have further use crossing it. She confirmed with Ms. Deganhart that per case law, the County would not be taking on any liability by approving the application.

Ms. Deganhart replied that there is support for the County doing this. All of the cases on easement are fact specific. In this instance of a 60-foot easement, it is what our standards require for a right-of-way in most cases. Much has to do with an expectation of when and how it was created, and assumptions of what was intended. She added that, if she was representing a property owner, she would take the position that it was an appropriate use of that easement.

Commissioner Westfall agreed that the legality of the roadway itself in both areas would have to be taken to court as all of the plats and deeds are defined differently. She asked if there is history in Ouray County where other subdivisions that were approved by the County are using existing roads. She continued to express concern as to whether the County was taking on any future liability because, in her opinion, this is a questionable roadway – the use is not questionable, the legalities of how the road is applied would have to be settled by a court.

Ms. Deganhart advised that a plat note could be crafted to address the issues of the condition and status of the road. Her concern would be for a potential buyer of the newly created lot(s); that he or she would need to be made aware of the issues.

Commissioner Westfall asked if there would be any liability for granting something that the County has not seen in its Code system.

Ms. Deganhart addressed the concern. The County knows that an 80-foot easement exists in Pleasant Valley Slope, and the County knows that there is at least a valid, legal, existing 20-foot easement over parcel B. At a minimum, there exists a 20-foot easement in Pleasant Valley Vista. She is not aware of any questions having been raised about the existence, validity or legality of the road as it exists in Slope No. 1. To get to the lots, there is access of record that allows it.

Commissioner Batchelder asked Greg Moberg what zoning was in effect at the time that Slope No. 1 was platted in 1975. Mr. Moberg replied that the Valley Foothills was not established until 1985. Commissioner Westfall suggested that there was no zoning at that time by virtue of the fact that other subdivisions deeded prior, came back and filed a plat after the fact. Mr. Moberg added that there is the situation where some were brought in under the old subdivision regulations and some under PUD regulations. Commissioner Batchelder explained that his reason for asking was that having the 20-foot absolute evidence pointing towards there being a 60-foot, would lead one to believe that there was anticipation of higher density than 1:35. Mr. Moberg replied that he would have to research it.

David Wine, who bought the first lot in Slope No. 1 in 1975, explained that he platted the Pleasant Valley Vista and that he made the dedication. He also made the notation about the Slope No. 1 easement access and explained that he did it for access to serve the nine other lots granted from Mr. Barker together with an undivided one-ninth interest in the road. The 60-foot easement was toned down from 80 feet. He went on to explain why he changed it from 80 feet to 60 feet.

Bob Thomas, attorney for the Applicant, advised the Board that since the last meeting he conferred with the president of the Pleasant Valley Slope No. 1 Road Maintenance Association who advised him that there has never been an issue raised about access along the subdivision. In response to earlier comments by Mr. Wine and Commissioner Westfall, he cited testimony in a previous court case that "when you use the phrase 60 feet, the average person assumes a development of some kind." With regard to the questions of liability, in the Lazy Dog litigation that went to the Colorado Supreme Court it was ruled that in determining the easements and the rights of easements, it is necessary to look at the scope of potential development. He noted that comments from the developer who is obtaining deeds that there is an automatic provision for automatic admission to the homeowners' association if any lot is subdivided, is irrefutable evidence of the potential intent to develop, especially coupled with the 60-foot easement. His client has produced the prima facie basis for what is appropriate and covered every base. In the Lazy Dog litigation, there was clear testimony that when Harry McClure deeded all that property, he knew that the only thing good for that property was for residential development. Mr. Thomas reiterated that when the supermajority vote was obtained from the homeowners' association, two things were agreed to as part of any approval process. First, Mr. Thibaut and R&R Ranch agreed to expend \$60,000 in road improvements in the upper area that will take care of a problem area that has been there for years. If the application were to be denied, it would be a harm to other landowners. Secondly, they agreed to no further lot splits.

David Wine spoke to title to the right of the easement. Title was conveyed individually to lots as undivided one-ninth interest. The Road Maintenance Association was organized to collect money from lot owners to maintain the road. It does not have any title to give in terms of expanding the use. He asked if the County has a right to expand tightly set, undivided, one-ninth interests to the nine lots. He expressed concern that the County would be setting a precedent and what would happen if another of the lot owners wanted to subdivide in the future in consideration of heirs, etc. Mr. Wine also addressed easements that cross someone else's land referenced by Commissioner Westfall as it applied to prescriptive rights. He cautioned the Board to be careful.

Commissioner Westfall discussed with Mr. Wine his undivided, one-ninth interest.

Mr. Wine discussed Mr. Thomas's reference to his client offering to improve the roads. Mr. Wine stated that it was the consensus of the maintenance association that if the road needed improvements, everyone could chip in \$5,000 each to that end. It was voted on at the first meeting that rather than take the Applicant's offer and have higher density the members would pay to improve the road. When the

Applicant offered \$60,000 to improve the road, a few of the lot owners who possibly could not afford the \$5,000 voted to accept the offer.

Mr. Wine indicated that at the visual planning board meeting a year ago everyone was against the lot split. If the Commissioners have discretion, they should look at those who are opposed. If the rules say that the Applicant has a right to do this and the County has no discretion in the matter, then the County could look at the legality of access rights over the easement.

Pat Coleman, attorney for Job Prak, summarized his previous comments from last week. First, the Code clearly requires the Applicant to prove that he has legal access. Even if that were not a Code requirement, it would be implied. Based on comments from legal counsel, no one has stated definitively that there is legal access. There has never been a court decision decreeing this legal access. He argued that the County has discretion. If the Code requires the Applicant to prove legal access, then the standard should not be "close enough" or "50-50 chance," but inarguable evidence. He added that the Code also requires slope grades and widths and does not distinguish if a road was there previously or had some other use, but has specific criteria for average trips per day and the number of units accessing it. Contrary to legal counsel's statement that the Code is vague, it is certainly not vague on that issue; it has quantifiable standards for width and slope. Mr. Coleman advised that if the Commissioners are not going to apply the Code, they should go through the public hearing process to amend it.

Mr. Coleman addressed his next issue, the 60-foot easement that might imply future development. According to Mr. Coleman, Mr. Barker said it was not his intent for future development. Mr. Wine indicated that this was not his intent. What is clear is that the same parties that conveyed the 20-foot easement were involved with conveying the 60-foot easement. They were very careful when they conveyed the 20-foot easement to specify that it served the nine lots in Pleasant Valley Slope No. 1. They did not include that specific language in the 60-foot easement. Mr. McClure and Mr. Barker were sophisticated people in terms of conveying real estate because they took the time to spell out in detail what the 20-foot easement was to be used for and if they had intended future development with the 60-foot easement, they would have gone to that level of detail, also. He added that it is a stretch to imply that a 60-foot easement is for development purposes.

Mr. Coleman pointed out that this raises important public policy issues. There is a substandard road that, based on the County's criteria, would not be approved if it was a new application. To perpetuate an already existing problem is contrary to public policy. The County needs to protect the public health, safety and welfare. He encouraged the Commissioners to deny the application.

Ms. Deganhart clarified with Mr. Coleman and Mr. Wine whether either was disputing the 20-foot easement over Open Space D in Pleasant Valley Vista. Mr. Wine said no with the caveat that it was for the original nine users only. He is not disputing that Lot 7 has legal access. Mr. Coleman concurred, adding that although some lots were conveyed prior to conveyance of the 20-foot easement, Lot 7 was not one of them. However, because it was an appurtenant easement, the After-Acquired Title theory applies here and all nine lots have access via the 20-foot easement subject to the restrictions stated in it.

Ms. Deganhart clarified that the Code does not apply to existing private roads.

More discussion followed regarding easement rights, dedication and subdivision.

Commissioner Batchelder confirmed with the County Planner that the proposal met all of the requirements of the Limited Planned Unit Development (PUD) process and that there is availability of adequate access for emergency services, as well as visitors. Commissioner Batchelder asked Mr. Coleman to what discretionary action on behalf of the Board was he referring. Mr. Coleman replied that he was referring to the Board's ability to apply the County's regulations to the application and that it is within the Board's discretion as to whether the application meets those regulations. Commissioner Batchelder clarified with the County Planner that the standard for the PUD process is such that if an applicant meets all of the provisions within the Code then the application is approved; that there is no option for disapproval. Mr. Moberg agreed. Assuming that the Commissioners agree with Staff, then there is no discretionary action available to the Commissioners on approval. Commissioner Batchelder asked the County Attorney how the one-ninth interest would affect this application. Ms. Deganhart replied that she understood the one-ninth interest to refer to the use of the road and not conveyance of fee interest in the road. Commissioner Batchelder inferred that the one-ninth interest was set forth to allocate responsibility for maintenance and not necessarily as a restrictive mechanism to disallow a lot split. Ms. Deganhart added that the articles for the road maintenance association specifically state, "In the event any lot is subdivided, a new membership shall be created for each resulting lot," which was recorded in 1980. Commissioner Batchelder added that the only thing presented that could be a limitation on added density of record might be the one-ninth interest but that there is evidence that would indicate that was not intended to be a density limitation issue. Therefore, the situation now is that there are 35-acre parcels without any recorded limitations on density. The zoning is such that it allows higher density than that which exists. There is nothing that would give the Commissioners, based on these things, the opportunity to deny based on increased density. Ms. Deganhart agreed that Commissioner Batchelder's comment was an accurate representation. She added that approval of the application, contrary to Mr. Wine's suggestion, would not grant easements, only acknowledge that access exists and the Board has adequate information and documentation that there is legal access.

The County Attorney suggested that the Commissioners make a motion and indicate their findings but that actual final approval be tabled until a resolution can be prepared.

M/S/P—Fully understanding the comments made about added density and the potential of opening the door for further subdivision of this area, with which he empathized, but that he did not see that the Commissioners had that sort of discretion, Commissioner Batchelder moved and Commissioner Westfall seconded the motion to approve the Slope 1, Lot 7 Limited PUD with a number of conditions. Condition 1: The attorney would verify the appropriate instruments that are recorded or will be recorded that would create no further subdivision of Lot 7 and no further subdivision of Lot 6. Condition 2: Approval would be subject to the road upgrades contemplated and listed in the packet (Exhibits F-1 and F-2). Specific to the road upgrades, where there is potential for disturbance of the ground and the potential for weeds growing, there needs to be either an entity or an individual who will be responsible for weed control on the portions of the road disturbed. He will leave this to the Applicant to determine. As far as specific findings, although testimony has been presented that the situation that exists could be setting a precedent that would increase traffic on a road that the County has no control over that may create health and safety issues, in actuality, based on Staff Report and based on the new limitations of any subdivision on Lot 6, he believes that the County is decreasing those issues because of no further subdivision. Other conditions of approval would be payment of a fee in lieu of land dedication to the Ouray School District No. 2, and that the application meets all criteria and conditions. Discussion. Mr. Coleman asked for a clarification of the required road upgrades as specified in Condition 2. The Board replied that the Applicant agreed to a \$60,000 improvement for the entire roadway in Pleasant Valley Slope. There was no further discussion. Motion passed unanimously.

Commissioner Westfall concluded that the current Code requirements for road standards need to be reviewed for Code amendments.

3:00 Commissioner Albritton recessed briefly and reconvened at 3:03:

G. 3:03 Land Use Item:

- 1. Application Request: B&V Subdivision Final Plat Amendment
- Owner's Name: Edward H. Fuller
- Authorized Agent: Peggy Tomaske
- Location: Section 35, Township 45N, Range 8W, NMPM, Ouray County, Colorado
- Purpose: Request for plat amendment to allow a residence on Lot 1 of the B&V Subdivision.

Peggy Tomaske was present on behalf of the Applicant. Greg Moberg, County Planner, and Doug Canright, Planner/Project Manager, were present.

Ms. Tomaske discussed the application.

M/S/P—Motion was made by Commissioner Batchelder and seconded by Commissioner Westfall to approve the final plat amendment for B&V Subdivision with two conditions. Condition 1: Prior to recording the amended plat, there be a new highway access permit; and, Condition 2: Prior to recording the amended plat, the Tri-County water line shall be extended to Lot 1. It shall be incumbent upon Land Use and the County Attorney to ensure that these conditions are met. Discussion. Such conditions and the motion will be good for a period of one year and subject to approval of the appropriate resolution. There was no further discussion. Motion passed unanimously.

M/S/P—Motion was made by Commissioner Batchelder and seconded by Commissioner Westfall to adjourn. There was no discussion. Motion passed unanimously.

3:13 Commissioner Albritton adjourned the regular session:

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS
OURAY, COLORADO

ATTEST:

Heidi M. Albritton, Chair

Michelle Nauer, County Clerk and Recorder

Don Batchelder, Vice Chair

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

Kristi R. Westfall, Member