

The Board of County Commissioners met in special session on May 12, 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.**

**9:05 Commissioner Albritton called this session to order:**

**9:05 Discussion and possible action concerning inspection and copying of Executive Session tape:**

The County Attorney, Mary Deganhart, presented the Commissioners with various items including a copy of the lawsuit, a copy of the letter to the newspaper's attorney dated April 11, 2006, a copy of the attorney's response, and a copy of the draft of a resolution that she prepared. She summarized that the lawsuit is basically asserting the same things addressed in the April letter but expanding on some of those things. She dismissed inaccuracies in the complaint. After listening to the tape again, she advised that the Board did go into executive session properly, and she discussed the contention that planning commission members are not personnel. The complainants are asking for either release of the tape or in camera review of the tape. When she suggested to the complainants' attorney that release of the tape would resolve the issue, the attorney implied that there was "more to it than that." She added that she finds it disturbing that the reason the Board went into executive session to protect people's privacy in a small community would be compromised by the lawsuit. Ms. Deganhart advised that the Board conduct discussions openly in the future and if negative remarks are made, people will have to realize that it is part of being in the public eye.

Commissioner Albritton found the complainants' spirit of cooperation disingenuous. She noted that the person who initiated the lawsuit has never spoken personally to any of the Commissioners and she believed the action was not a sincere effort to benefit Ouray County. Tax dollars may be spent on a frivolous lawsuit. She suggested releasing the tape.

Commissioner Batchelder discussed one of the requests in the alleged suit to rescind the action taken by the Board in the regular meeting in making the appointments to the Planning Commission, and asked the County Attorney if it would be in the County's best interest for clarity's sake to take some sort of action either by rescinding and reappointing, or by ratifying the action taken in the regular meeting on the appointments. Ms. Deganhart advised that the May 22 meeting would be the appropriate time to do that. She suggested contacting all of the appointees and applicants. Once reappointments are made, the Planning Commission would have to go back and ratify all prior actions.

Commissioner Westfall agreed. She noted that in light of the fact that there is currently no case law regarding personnel, she does not want to put the County in the position of making case law. She would rather choose a battle worth fighting and she had no problem with releasing the tape.

Ms. Deganhart discussed that in the future the Commissioners would need to be extra vigilant regarding the open meetings law and that she would develop a checklist to that end.

Commissioner Albritton allowed that there was no conspiracy; the Commissioners would not have made the appointments they made if they did not think they were appointing the best-qualified applicants. She added that they went through the most public interview process ever through a whole day of interviews and that no one from the public attended.

Ms. Deganhart suggested that no one has disputed that the three people who were appointed are not qualified.

Commissioner Westfall spoke of rescindment. If rescinding and reappointing is just a matter of taking the time to do it and have the Planning Commission reappoint, in the spirit of settlement that is not difficult to do. She asked what would be the best way to save the County money and to go forward.

Commissioner Batchelder discussed the best course of action – rescinding and subsequently taking the same action again, ratifying the previous action, or, because the action was taken in a regular meeting, not taking any further action.

Ms. Deganhart felt that taking no action would only prolong the issue. The safer course would be to leave the appointments stand for now and have the Planning Commission go forward, have the meeting on May 22 with discussion about the Planning Commission members, and discussion of appointment to the Planning Commission.

Commissioner Batchelder reminded all that technically the Planning Commission is an advisory committee and that final decision rests with the Board of County Commissioners.

Connie Hunt suggested that if the Board rescinds the appointments and either reappoints or appoints new members, then the actions taken by the Planning Commission by approval of resolutions and minutes, she would recommend that the Board go back and have the Planning Commission— and that is all a part of the process, it would take some time and there would be some delays, but that is what they are wanting. If the County complies with their request and follows the letter of the law by rescinding and reappointing, once the Commissioners have the correct Board, they should have that Board go back and approve those actions.

Ms. Deganhart advised that if the Commissioners arrive at the same conclusion on May 22 with the same individuals, by not rescinding just reappointing, they would not have to go back and reapprove. A blanket motion at the Planning Commission meeting could accomplish this. If new members are appointed, then the new members would have to go back and listen to tapes of the meetings and decide if they had the same opinions as their predecessors. It could get complicated at this juncture depending on how they would choose to vote on the issues.

Commissioner Albritton observed that the Board is doing so many positive things now and it is sad that the community is focused on this negativity.

Commissioner Batchelder reported for the record that today's meeting was properly noticed and posted in the official County posting place, and could have been posted in the newspaper of record except for the fact that it is published weekly instead of daily.

Commissioner Albritton, in regards to releasing the tape, noted that the discussions were held privately to protect the individuals who applied and requested that the newspaper be respectful of them. It would be unfortunate if the tape were to be used in a negative fashion.

**M/S/P**—Motion was made by Commissioner Westfall and seconded by Commissioner Batchelder to approve Resolution 2006-035 effecting the release of the April 3, 2006 executive session tape for public review as presented. Discussion. Technical points were addressed and a decision made to put a footnote in the April 3, 2006 Minutes referencing today's minutes and resolution. A discussion followed regarding how to post this item on the May 22 agenda. Commissioner Batchelder commented that it is not unusual for a Board to make decisions without a huge amount of deliberation. There was no further discussion.

Roll call vote on the motion:

Commissioner Albritton voted "Yes"

Commissioner Batchelder voted "Yes"

Commissioner Westfall voted "Yes"

Motion passed unanimously.

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

**9:50 Commissioner Albritton adjourned the special session:**

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS  
OURAY, COLORADO

ATTEST:

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Heidi M. Albritton, Chair

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Michelle Nauer, County Clerk and Recorder

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

By: \_\_\_\_\_  
Linda Munson-Haley,  
Clerk of the Board

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Kristi R. Westfall, Member