

The Board of County Commissioners met in regular session on July 23, 2007. Those present for the session were Don Batchelder, Chair; Heidi Albritton, Vice-Chair; K. Keith Meinert, Member; Mary Deganhart, County Attorney; Connie I. Hunt, County Administrator; and Linda Munson-Haley, Deputy Clerk of the Board.

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

A. 9:05 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.

With no items for the Call to the Public, the Board proceeded to the next agenda item.

B. 9:05 General Business:

1. Request for approval of warrants:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve warrants as presented. There was no discussion. Motion passed unanimously.

2. Request for approval of July 2, and 9, 2007 minutes:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve minutes for July 2, 2007 and July 9, 2007 as presented. There was no discussion. Motion passed unanimously.

3. Review and acceptance of Public Trustee Report for June 2007:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to accept the Public Trustee Report for June 2007 as presented. There was no discussion. Motion passed unanimously.

4. Request for approval of minor amendment to reflect a correction to paragraph two of the Memorandum of Understanding regarding the Dave Wood Road / Horsefly Road:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve a minor amendment to reflect a correction to paragraph two of the Memorandum of Understanding regarding Dave Wood Road and Horsefly Road as presented. Discussion. Commissioner Meinert noted that he preferred the original language. Connie Hunt pointed out that everyone had agreed to the change at the roundtable but that she had neglected to make the change in the document; therefore, this was a correction to rectify the omission. Commissioner Meinert expressed trepidation about anything that would water down concerns of the road being turned into a bypass and wanted to reinforce his apprehension about the future direction of the road. With no further discussion, the motion passed unanimously.

5. Request for adoption of Resolution 2007-038 to ban open fires within the unincorporated areas of Ouray County, Colorado: (Ratification of action taken on July 9, 2007)

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to adopt (ratify) **Resolution 2007-038** to ban open fires within the unincorporated areas of Ouray County as presented. Discussion. Commissioner Meinert wondered about lifting the ban since it appeared that the rainy season had begun. It was the consensus of the Board to contact Sheriff Mattivi about removing the ban for the entire county but to keep the prohibition on Log Hill Mesa [effected by Resolution 2007-035]. With no further discussion, the motion passed unanimously.

6. Request for adoption of Resolution 2007-039 amending Resolution 2000-062 regarding Fees Charged for Building Permits:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to adopt **Resolution 2007-039 amending Resolution 2000-062** regarding building permit fees as presented. Discussion. Commissioner Meinert discussed the three different methods of determining value. Commissioner Batchelder noted that generally the square foot cost is set lower than market value and is the preferred method. Mary Deganhart added that she had not heard of any complaints for using the square foot method. With no further discussion, the motion passed unanimously.

7. Request for approval and Chair’s signature on Pre-Grant Application Form for FEMA 2007 Fire Prevention and Safety Grants (for calendar year 2008):

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve the Chair’s signature on a Pre-Grant Application Form for FEMA 2007 Fire Prevention and Safety Grants for calendar year 2008 as presented. Discussion. Commissioner Batchelder confirmed that the County Administrator approved the application. With no further discussion, the motion passed unanimously.

8. Request for approval of Resolution 2007-040 Establishing Limitations on the Use of Certain County Property:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve **Resolution 2007-040** establishing limitations on the use of certain county property as presented. Discussion. Commissioner Meinert asked who would provide and install the signs. Commissioners Albritton and Batchelder recalled that the Ouray Trail Group would do it. By consensus, the Board asked the County Administrator to follow up by thanking the Ouray Trail Group for the generous offer and making sure that the signs are posted. With no further discussion, the motion passed unanimously.

9. Request for approval of Resolution 2007-041 Setting Forth Land Use Code Revision Priorities:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve **Resolution 2007-041** setting forth Land Use Code revision priorities as presented. Discussion. Commissioner Batchelder asked to insert a new point after the first point stating, *“The BOCC may modify these priorities based on input from the public and county staff. Such modification in priority shall be enacted by resolution.”* Commissioner Albritton amended the motion to include the new language and the amended motion was seconded by Commissioner Meinert. Motion passed unanimously.

10. Request for approval of Resolution 2007-042 concerning Board of Equalization Extension Dates for Petitions on Appeal and Board of Equalization Hearings:

Mary Deganhart explained that because Notices of Determination were sent out late this year, there was a need to extend the deadlines for the public's benefit.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve **Resolution 2007-042** concerning the Board of Equalization extension dates for petitions on appeal and Board of Equalization hearings as presented. Discussion. Commissioner Meinert discussed the word “equalized” in the resolution and Ms. Deganhart explained that it was in the state statute. Commissioner Batchelder advised the Board that he would be gone from August 7 to August 14 in the event that the dates needed to be extended beyond August 6. With no further discussion, the motion passed unanimously.

11. Request for approval of Arbitrators list. These arbitrators can be used for property disputes between property owners and the Ouray County Board of Equalization:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve the list of arbitrators as presented. There was no discussion. Motion passed unanimously.

12. Request for award of Multi-Hazard Mitigation Plan Proposal:

Alan Staehle, Emergency Management Coordinator, was present. He discussed a paper he had prepared listing the benefits of the two bidders and recommended that the bid be awarded to AMEC. He clarified that the plan was for natural hazards, not hazardous materials.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve the Multi-Hazard Mitigation Plan proposal as presented. Discussion. It was ascertained that the County's obligation would be in-kind. In response to prompting by the County Attorney, Commissioner Albritton amended the motion to include award of the bid to AMEC for the Multi-Hazard Mitigation Plan with County Attorney review and approval. With no further discussion, the motion passed unanimously.

13. Request for adoption of Resolution 2007-043 declaring certain property surplus (six weathered timbers from Road and Bridge), and donating such property to the Ouray Trail Group, Nordic Council, Historical Society and Red Mountain Project to be used for the Nordic Trail system.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to adopt **Resolution 2007-043** declaring six weathered timbers from Road and Bridge as surplus property and donating them to the Ouray Trail Group, Nordic Council, Historical Society and Red Mountain Project to be used for the Nordic trail system as presented. Discussion. Commissioner Batchelder ascertained from the Road Superintendent that the timbers were no longer needed. With no further discussion, the motion passed unanimously.

D. 10:15 Commissioner/Administrative Reports:

Mary Deganhart, County Attorney, discussed the following:

- 1) **Cornerstone annual report** She received the annual report for Cornerstone Metropolitan Districts 1 and 2 for Commissioners review.
- 2) **Legal issues and emergency management training** She attended training in Durango last week.
- 3) **Dickson land exchange** She related that the exchange had been recorded and was now complete.

Connie Hunt, County Administrator, discussed the following:

- 1) **Dave Wood Road / Montrose County / Ouray County Road Maintenance Agreement** Hideout Lake agreed to halt any commercial hauling while road maintenance work is being done. She clarified that of the six-mile stretch in Ouray County, two miles belonged to the U.S. Forest Service with whom Ouray County has a FRTA (Forest Roads and Trails Act) agreement.
- 2) **Tri-River Extension budget meetings** The meetings will be held on August 30 and August 31 and are typically held in Delta at the County building. Commissioner Batchelder suggested that at least one Commissioner attend with the County Administrator. Commissioner Albritton agreed to go and that either day would be fine. Commissioner Meinert indicated that he, also, wanted to attend.
- 3) **Revised list of dates for meetings** She advised the Board that a revised list had been drawn up of Board of County Commissioners and Board of Equalization meeting dates and locations.
- 4) **Request for County Commissioner attendance at City Council meeting** Patrick Rondinelli, City Administrator for the City of Ouray, asked for one Commissioner to attend the meeting on August 6 to discuss the proposed use tax and how it would affect the City.
- 5) **Reverse 911 calls** The cost of reverse 911 calls countywide is \$1,200 dollars.
- 6) **Fire ban signs** Kudos to Chris Miller for finding fire ban signs in a storage room. CDOT allowed him to put them on CDOT signposts.
- 7) **Sims/Radcliff photo display** She received a letter from Chris Pike suggesting that the County provide a space in the Courthouse for a photo display of former County Clerks Addie Sims and Ramona Radcliff. She forwarded the request to the current County Clerk for follow-up. The Commissioners felt that it was a great idea and Chris Pike offered to help.

Commissioner Albritton discussed the following:

- 1) **Letter from Secretary of State about HAVA** She discussed a letter from the Secretary of State in reply to a letter from the Commissioners regarding HAVA (Help America Vote Act) compliance issues. She felt that certain statements were inaccurate, especially a statement that Ouray County was aware of the costs for HART [*the vendor for election equipment*]. A discussion followed and Commissioner Batchelder summarized the consensus of the Board regarding a reply letter to the Secretary of State: 1) Thank him and encourage him in his negotiations with HART to advocate for options that would benefit the smaller counties; 2) Point out the inequities that small counties experience in the cost-per-vote compared to large counties and that State requirements for T1 lines exacerbated the situation; and 3) Ask if the State could provide some type of relief to the small counties. Commissioner Albritton expressed a preference that all three Commissioners sign the letter. Ms. Deganhart will provide a draft for Commissioner review on August 27.
- 2) **Letter from Hamilton regarding Wisteria Road** Dave Hamilton addressed concerns in a letter to the Commissioners about the future of the road as far as a bypass to Dave Wood Road and about rumors of an airstrip there. The road was connected to Dave Wood Road as an emergency access for fire and safety concerns and is a very rough road at present. Commissioner Batchelder suggested that the County Administrator speak with the Horsefly Fire Protection Association, compile the information for a discussion item on a future agenda, and send a position notice saying that the County has no intent to open that portion of the road for public access but does recognize the need for emergency access to protect the health, safety and welfare of its citizens. The item was scheduled for August 6. Commissioner Meinert asked to have detailed maps available to better understand the situation. Commissioner Albritton asked Doug Canright to investigate the jet port rumors.

Commissioner Meinert discussed the following:

- 1) **New construction in Ironton** He noticed two houses being built off of Hwy. 550 and reiterated his request for Land Use to advise the Commissioners of building permits that are submitted or in process so the Commissioners would be aware in the event of any issues or concerns. Connie Hunt pointed out that Land Use provides a spreadsheet periodically with that information and she asked Land Use Staff for an updated spreadsheet.
- 2) **Volunteers for Outdoor Colorado (VOC)** He met with VOC and the Yankee Boy Conservation Association (YBCA) last week at the top of Yankee Boy Basin. YBCA is working with VOC to provide volunteers for projects to improve the campgrounds. There are no campground hosts this year and that is causing some confusion.
- 3) **Affordable housing** In preparation for discussion on August 20, he exhibited a DOLA guide on affordable housing, "Affordable Housing: A Guide for Local Officials." Commissioner Batchelder related that he had a copy but Commissioner Albritton asked for one.
- 4) **Tri-River Area Advisory Committee nominations** He received a letter regarding nominations from Ouray County. By consensus, the Board authorized a letter of support for Sue Carmody and Linda Corwine.

M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to support nomination and/or appointment of Sue Carmody and Linda Corwine to the Tri-River Area Advisory Committee. There was no discussion. Motion passed unanimously.

Linda Munson-Haley, Clerk of the Board, discussed the following:

- 1) **Ouray County Study Group** The Commissioners agreed to curtail convening the study group until the latter part of August.
- 2) **Insurance options for OHVs** Provided a copy of a statement to place on the County website regarding insurance options for OHVs in light of the passage of Ordinance 07-01.

- C. 10:25 **The Board of County Commissioners convened as the Liquor Licensing Authority for Ouray County concerning the following report and applications:** *(originally scheduled for 10:10)*
1. **Request for approval and Chair's signature on Findings Report for the Hotel and Restaurant Liquor License Renewal for Porter and Chessie, LLC dba Cowboys Grill, NKA Colona Roadhouse:**
 2. **Request for approval and Chair's signature on Hotel and Restaurant Liquor License Renewal for Porter and Chessie, LLC dba Cowboys Grill:**
 3. **Request for approval and Chair's signature on Permit Application & Report of Changes to change the Trade Name from Cowboys Grill to Colona Roadhouse:**

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve and authorize the Chair's signature on the Findings Report for the Hotel and Restaurant Liquor License Renewal for Porter and Chessie, LLC dba Cowboys Grill; the Hotel and Restaurant Liquor License Renewal for Porter and Chessie, LLC dba Cowboys Grill; and the Permit Application & Report of Changes to change the Trade Name from Cowboys Grill to Colona Roadhouse as presented. Discussion. Mary Deganhart explained that the application indicated a change of financial interest and the Applicant did not supply the information. Commissioner Albritton amended the motion for approval contingent upon the County Clerk getting additional information and determining if the application is appropriate, or if there are substantial changes bringing it back to the Board of County Commissioners sitting as the Liquor Licensing Authority for Ouray County. The amended motion was seconded by Commissioner Meinert. With no further discussion, the motion passed unanimously.

10:30 The Liquor Licensing Authority reconvened as the Board of County Commissioners:

- D. 10:30 **Commissioner/Administrative Reports, continued:**

Commissioner Batchelder discussed the following:

- 1) **Region 10 Executive Board meeting** The Executive Board reviewed the final part of the Second Home study, which will be presented here in the next couple of months.
- 2) **Western District Meeting** scheduled for August 24 from 10 a.m. to 2 p.m. in Montrose at the Human Resources annex. The intent of the meeting is to go over legislation from the previous legislative session and its effects, and to discuss upcoming legislation. Connie Hunt will get the agenda. If there will be discussion time for proposals to CCI on upcoming legislation, he asked that the County Attorney attend on behalf of the Board.

Doug Canright and Mark Castrodale with the Land Use Department were present to discuss expansion of the Dallas Park Cemetery. Commissioner Batchelder suggested that the County process a special use permit on behalf of the Cemetery to include the expansion. Commissioner Albritton agreed. Staff noted that this was purely administrative and recommended waiving the fees.

Connie Hunt related that restoration work started today on the Courthouse.

10:42 Commissioner Batchelder recessed briefly and reconvened at 11:00:

- E. 11:00 **Public Hearing:**

1. **Applicant:** **Heritage Inn and Suites of Kansas City, Inc. and HT Heritage Inn of Erie, LLC**
Location: Fairway Pines Subdivision 1A, Lot CV 103
Request: Consideration of Special Use Permit for the construction of a golf shop facility and a member's club described as Phase I and for construction of spa and restaurant facilities described as Phase II.

Dave Burnham with Strategic Real Estate Group (SRG) was present on behalf of the Applicant. Doug Canright, Planner/Project Manager, and Mark Castrodale, Associate Planner, were present representing the Land Use Department.

Commissioner Batchelder opened the public hearing and described the application. He noted that the Commissioners had received a packet from Land Use that included two separate applications. Each application included a Staff Report dated July 18, 2007; completed County application & proof of payment; a letter dated July 6, 2007 from David Burnham, Director of Development and Operations for the Divide Ranch & Club; site plans and building elevation drawings; copies of all notices, referrals and responses; copies of applicable "will-serve" letters; request to waive the 45-day requirement and Planning Commission review; a copy of Resolution 2007-036 approving the request; full-size site plans, elevations and floor plans.

Doug Canright, Planner/Project Manager, explained that this was a follow-up to previous action on a special use permit where the Board of County Commissioners waived the requirement to go through Planning Commission. Commissioner Batchelder clarified that the action was to eliminate the condition of a previous resolution that the application MUST go through Planning Commission. Mr. Canright continued to explain that both of the applications [Phase I and Phase II] required a special use permit. Phase I was being considered in order to meet a longstanding clubhouse trigger for future development.

Commissioner Batchelder opened the hearing to public comment.

John Moss, Fairway Pines, questioned whether Mr. Canright had indicated that Phase I alone met the requirement for a clubhouse. Mr. Canright replied that the question had not been reviewed by the County Attorney yet and clarified that he had not made that determination.

Dave Burnham interjected that he was told that Phase I would satisfy the requirement.

Penny Devin, Fairway Pines, asked if Phase I would satisfy all of the requirements and whether Phase II would be required.

Mary Deganhart recollected that the requirements of the previous resolutions were general. As a condition of the Planned Unit Development (PUD) Agreement that was approved, the developer was required to apply for a building permit and a special use permit for a clubhouse facility.

Pam Fugazzi, head of the Fairway Pines Architectural Review Committee (ARC), explained that the developer had presented plans for all three of the buildings that were being revised based on ARC recommendations. The intent of the developer is to build three buildings.

The Commissioners asked Mr. Canright if the trigger he referred to was the requirement by previous resolutions and approvals that a clubhouse be built prior to proceeding to other phases of the development, including high density residential. If that is the case, is the proposed clubhouse and pro shop what was anticipated as the clubhouse, or did the clubhouse include all three buildings – a pro shop, spa and restaurant, and does it now meet the requirement of the condition for further development.

Doug Canright explained that the Land Use Code prohibits Ouray County from issuing a special use permit without ARC approval. ARC could withhold approval preventing the County from issuing a building permit as leverage for completing the spa, restaurant, etc.

A discussion followed regarding whether or not this was the final point of leverage for the County. The County Attorney explained that what the clubhouse was to include was never specified; the conditions of the PUD agreement required the clubhouse to serve the golf course. She questioned whether a spa or restaurant would qualify. It would be incumbent upon the Board to determine the definition of a clubhouse. She added that the County does have some leverage on the final plat and final plan but as long as the Applicants were proceeding with obtaining all of the required permits, they would be in compliance.

Dave Burnham indicated that previous conversations with Land Use led him to believe that the proposal for Phase I would satisfy the requirement and that a spa would be secondary.

John Neely, attorney for the Applicants, reiterated what he and Ms. Deganhart discussed with regard to what was expected in a clubhouse.

Scott Chomiak, Strategic Real Estate Group, representing the Applicants, explained that Phase I is an obligation. While the intent is to build the other amenities, the Applicants would do so as market conditions allowed. For those facilities to survive there would be a need for more build-out.

Dick Allison, Fairway Pines resident, explained that everyone's understanding paralleled what was already available and further defined by the courts in recent litigation over the temporary clubhouse and the old clubhouse to include tennis courts, a spa, etc. If the proposed clubhouse is accepted, it would mean a diminution in what was promised to people who built homes.

Bill Fugazzi agreed with Mr. Allison. If Phase I ends up being all there is, it would not meet expectations.

Betty Thomas, Fairway Pines, explained that the expectation was that a clubhouse would at least include a pro shop, a meeting place and a restaurant, which would mean Phase I and Phase II.

Mr. Burnham explained that Phase I included a pro shop, a private members club to include lockers, a lounge area, quite possibly a wet bar for members, and a private use area on the second floor with a 30-foot tower for private use for meetings, etc. Food and beverages would be provided on a limited basis, certainly not a complete restaurant. He elaborated that the limited basis meant sandwiches, a grill area, and liquor.

Penny Devin expressed her disappointed. She pointed out that 80% of the people in Fairway Pines do not play golf. They had been waiting and paying dues for ten years for a restaurant facility. She wondered what those people would get out of Phase I.

Mr. Burnham reminded her of the members' area.

A discussion followed as to the intent of a clubhouse and how to determine what the County record required for a clubhouse.

Bob Luttrell, resident of Fairway Pines, noted that the Phase I and Phase II split raised doubts and a lack of confidence in SRG in what representatives said they would do and what had been accomplished.

Mr. Neely responded to the comments regarding the court order and a discussion followed.

Commissioner Albritton explained that she was under the assumption that the developer was working with the homeowners to resolve the problem and wondered why there was a last minute dispute. She understood that even though phased, it was a complete package but was now hearing that Phase I was one thing and Phase II would be based on market. She added that this was not in the spirit of prior discussions with the homeowners.

Mr. Burnham replied that programmatically they are all a package. By breaking up the buildings and phasing, the developer could start sooner. The overall intention from the beginning has been the three-building component. It made more sense than lumping everything into one building phase that would take longer to construct. Discussions with County Staff led the developer to believe that the first phase would trigger what was required in the PUD agreement.

Marsha Allison, Fairway Pines resident, addressed Commissioner Albritton's comment about a meeting between the developer and the Fairway Pines homeowners association and noted that she had never been involved in a focus group with the developers and did not have the opportunity to make comments to them.

Dave Burnham countered that the developers did have two meetings early on, discussing plans. The homeowners association has had some input, maybe not as a tight focus group. He indicated that the developers had tried to keep an open dialogue and had initiated phone calls to members to get their input on various items and with the overall resort plan.

John Moss returned to the trigger issue and asked if the developer would commit to a date certain for construction of Phase II.

Mr. Burnham explained that the reason for submitting both phases at this time for permits was to enable the developer to kick in with Phase II when appropriate. The intent was to start on Phase I as soon as possible because the Commissioners had indicated that they would be reluctant to issue a temporary use permit for next year.

When Commissioner Albritton asked if the developers would agree to a date certain, Scott Chomiak replied not at this time.

Bob Luttrell suggested that the developers receive permission to build Phase I provided that they provide an irrevocable letter of credit for starting Phase II.

Dick Allison discussed the ambiguity of the 1998 resolution regarding financial assurances and suggested that it would be important that a letter of credit be for the full cost of the project.

Commissioner Batchelder explained to the Applicants that historically the Commissioners had worked hard to protect the interests of the citizens in fulfilling the original desires and intents of the development. The current dilemma is the expectations of the residents as to what a clubhouse should consist of. If the Applicants are not in a position at this point to guarantee that Phase II will happen, then the Commissioners will be put in the position of looking at to what degree they could exercise discretionary authority to protect the residents. The preference would be to have a way to condition approvals to ensure that Phase II would happen.

Larry Fredrickson, member of the board of the homeowners association, explained that it was clear in the CC&Rs that the homeowners association was promised from the previous developer more amenities than are included in Phase I.

Commissioner Batchelder suggested that on advice from the County Attorney the Board may consider going into an executive session to consider the issue. Commissioners Albritton and Meinert agreed.

Scott Chomiak indicated that the Applicants would like to get together with legal counsel and staff because of the disconnect. Attorney Neely included a meeting with members of the homeowners association, suggesting that the Applicants would rather flesh it out without dispute.

Commissioner Batchelder agreed that the disconnect needed to be resolved and guarantees put into place in order to take action.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to continue the public hearing to July 31, 2007 at 4 p.m. at the Ouray County 4-H Event Center in the north room. There was no discussion. Motion passed unanimously.

12:06 Commissioner Batchelder broke for lunch and reconvened at 1:30:

Roland Glandorff, Chairman of the Board for the Dallas Park Cemetery, informed the Commissioners that the Dallas Park Cemetery Board had objections to a special use permit. In 2001, the Cemetery Board began discussing opening up another area to future burials. Because the land had historically been a cemetery, the Board did not feel that the Cemetery needed a special use permit.

Commissioner Meinert explained that the Commissioners had discussed the issue earlier and indicated that the County would waive the fees for a special use permit and that there would be no administrative burden to the Cemetery Board.

Mr. Glandorff informed the Commissioners that he wanted to state for the record why the Cemetery Board felt that a special use permit was not necessary.

Commissioner Batchelder clarified that the use is a grandfathered use but that, technically, as Commissioner Albritton stated, expansion of a nonconforming use requires a special use permit. He concluded that it would be in the Board's best interest to issue a special use permit.

F. 1:38 Consideration of Citizen Initiated Request to develop a Ballot Question to remove Term Limits for County Commissioners. Public input is desired:

Brian Peters, initiator of the request, was present.

Commissioner Batchelder explained for the record that the Commissioners had been approached previously by Brian Peters and had expressed a desire for public input and, thus, set this meeting. He recused himself since he was the only Commissioner that this would directly affect and turned the meeting over to Commissioner Albritton.

Brian Peters submitted signed petitions (*Public Exhibit F-1*) with 164 names in support of putting a question on the ballot. He indicated that the number represented a little over 7% of the votes cast in the last election. He recalled that when the issue came up several years ago it was voted down by one vote.

Scott Williams spoke in favor of putting the issue on the ballot explaining that there were arguments one way or the other on the merits of eliminating term limits for Commissioners but a public official deserves to be reelected for doing a good job or voted out for doing a poor job.

Gail Kennedy agreed with Scott Williams.

Rene Tegtmeyer explained his reasoning for not supporting elimination of term limits. The fact that there is one individual whom the majority of the citizens wants to stay onboard does not justify making it a policy for the future.

Mary Deganhart explained the process. The Board of County Commissioners would adopt a resolution reciting reasons for placing the question on the ballot and providing background information. At this time, the County Clerk would need to be notified that the Board wanted to place a question on the ballot.

Commissioners Albritton and Meinert agreed that this was the direction the County should take and that it would be consistent with the other elected officials in the county. Commissioner Albritton asked Staff to put together a resolution and ballot language for discussion on August 6 at 11 a.m. and indicated that the Commissioners would welcome comment at that point.

Ms. Deganhart pointed out that the Commissioners had the options of eliminating the term limits or lengthening them.

Brian Peters explained that the petition he circulated was based on elimination of term limits.

Mr. Tegtmeyer noted that there is a big difference between the Board of County Commissioners and other elected officials as the Commissioners make all of the policy decisions for the county and the others implement those policies.

Commissioner Meinert explained that a decision would be made on August 6 and that he did not see a need for solicitation of further signatures.

1:57 Commissioner Batchelder recessed and reconvened at 2:30:

G. 2:30 Public Hearing:

The Board of County Commissioners convened as the Board of Zoning Adjustment in consideration of the following variance request:

1. Applicant: Wayne and Leslie Phinney

Location: 3715 County Road 17

Request: Consideration of a front-yard setback variance that will allow a proposed single-family residence to be constructed within eight-and-one-half inches (8.5") of the front property line where a twenty-five foot (25') setback is required.

Those present included Doug Canright, Planner/Project Manager, and Mark Castrodale, Associate Planner, with the Land Use Department; Chris Miller, Road Superintendent, with the Road and Bridge Department; Applicant Leslie Phinney and her representative, Doug MacFarlane, architect.

Commissioner Batchelder opened the public hearing and explained the request. He noted that the Board had each received a Staff Report dated July 5, 2007 with recommendations, along with the Applicants' narrative and supporting

documentation; an engineering study by McMillon Engineering; responses from Road and Bridge and the County Attorney; site photos with a guide; and site plans and building elevation drawings. The Applicants provided additional information (*Applicant Exhibit G-1*).

Mark Castrodale, Associate Planner, discussed the request. Staff noted during a site visit a narrow building site with unique topographical conditions. There were concerns for potential rockslide hazards on the site in general but not specific to the setback. There were also concerns about drainage. Excavation may be required. It was Staff's opinion that the lot presented exceptional topographic conditions and met the definitions of Section 19.7.D(3) of the Land Use Code. Staff recommended approval with the conditions detailed in the Staff Report.

A discussion followed regarding the setback requirement in the Staff Report.

Doug MacFarlane proceeded to describe the reasons for the requested variance and setback concerns with siting of the residence in regard to the hillside to minimize drainage and rockfall potential, and easement issues.

Commissioner Batchelder, Chris Miller and Mary Deganhart discussed setting a precedent and continued encroachment in the area, and potential danger to the traveling public on County Road 17.

Doug Canright pointed out that the Applicants were requesting a variance because of their contention that they have undue hardships and topographical constraints. It would not necessarily be setting a precedent because someone else would have to show similar undue hardship and topographical constraints to be granted a variance.

A discussion followed as to what other options would be open to the Applicants such as rotating the house or building a house with a smaller footprint. Mr. MacFarlane pointed out that a smaller house would be a possibility; however, this is a modest house as designed now.

A lengthy discussion followed regarding possible implications to future road widening and maintenance. Chris Miller expressed concerns about stability issues if the County had to do backslope on the road.

Commissioner Batchelder suggested a compromise to allow an 8-foot setback; however, the footer on that side of the residence, the eastern side, rather than the required 4 feet below ground level would be 6 feet or bedrock. Mr. MacFarlane agreed that would be reasonable. Commissioner Batchelder added that the setback would be measured from the roofline.

M/S/P—Motion was made by Commissioner Batchelder and seconded by Commissioner Albritton to accept the Land Use recommendation in the Staff Report and approve the variance with the following changes: 1) The second and fifth bullet points requiring a geotechnical report and obtaining of an easement for the driveway prior to issuance of a building or driveway permit be eliminated; 2) The first bullet requiring a minimum of a 12-foot setback be changed to an 8-foot setback; and 3) An additional bullet be added requiring that the eastern foundation wall footer be a minimum of 6 feet below ground level or bedrock, to be verified by a geologist. Any part of the foundation, including the eastern wall, that is more than 12.5 feet from the property line shall meet County building code and shall not be required to be 6 feet below ground level. Commissioner Batchelder also directed that the findings in the resolution state that the Land Use Department has interpreted the Code to the degree that the Applicants fit the provisions for a variance; the motion for a variance included requirements to increase the depth of the footer to mitigate any potential impacts if the county road had to be widened; and that putting the corner into the hillside as opposed to broadside would minimize soil disturbance and maximize structural integrity so as to be less prone to sliding and to act as an anchor in the hillside. The resolution should also include a discussion of other findings to deter precedents. A discussion followed regarding right-of-way easements.

A roll call vote on the motion yielded the following results.

Commissioner Batchelder voted yes
Commissioner Meinert voted yes
Commissioner Albritton voted yes

With no further discussion, the motion passed unanimously.

3:19 The Board of Zoning Adjustment reconvened as the Board of County Commissioners and Commissioner Batchelder recessed and reconvened at 3:24:

3:24 The Board of County Commissioners reconvened as the Board of Zoning Adjustment to clarify the previous motion:

Commissioner Batchelder pointed out that the strict 6-foot requirement for the footer would constitute engineering at the Board of County Commissioners level that the Commissioners are not qualified to do. To clarify, the intent of the 6-foot requirement was simply to lower in elevation the bearing surface of the structure such that the County could expand the road closer to it without undermining the structure. If an engineer were to recommend a modification to that, the County would be amenable to the modification understanding the County's stated intent.

3:26 The Board of Zoning Adjustment reconvened as the Board of County Commissioners and Commissioner Batchelder recessed to reconvene at 3:35:

H. 3:35 Land Use Item:

1. Discussion and direction regarding Temporary Structures:

Commissioner Batchelder referred to a memo from Doug Canright dated July 19, 2007 indicating that the issue of temporary structures could be addressed by updating to the 2003 International Building Code (IBC) and supplementing that with a simple modification requiring a site development permit for any activity on the property that would be subject to a permit. Commissioner Batchelder ascertained that this would be a Code change.

Commissioner Batchelder suggested three steps: 1) adoption of the appropriate section of the IBC; 2) initiation of a Code change to Section 19; and, in the meantime, 3) from a policy procedure standpoint, the Commissioners take the position that temporary structures are addressed through temporary use permits. Commissioner Batchelder added that the only other option would be to deny temporary structures until they could be addressed in the Code.

Doug Canright pointed out that enforcement is complaint driven only at this point.

A discussion followed regarding whether or not the County was trying to eliminate yurts or regulate them.

In a discussion on how long the permit would be good, Commissioner Batchelder expressed a desire for 7 or 8 months as opposed to 6 months. Mary Deganhart suggested adopting these changes by resolution.

Commissioner Batchelder wanted to make it clear that the Commissioners were not trying to preclude people from enjoying their property by living in tents, yurts, or 5th wheels; however, they recognized the points of health, safety and welfare, and compliance.

Doug Canright suggested that the County Assessor review any changes because of the implications to classification with regard to vacant land versus residential. Commissioner Batchelder countered that this would not apply to temporary structures and that the Commissioners could take the position that classification would not change from vacant to residential. The applicant could also sign a disclaimer.

I. 3:54 Discussion and consideration of Letter of Intent to the County Clerk and Recorder concerning Potential Ballot Questions (originally scheduled for 4:00):

Commissioner Batchelder suggested that, based on input received at public meetings, though scant, the County should proceed with a letter of intent for a ballot question for a use tax as outlined by recommendations from the Citizens Strategic Initiative and Accountability Committee (CSIAC) and a bond. The Commissioners instructed Connie Hunt to prepare a notice to the County Clerk advising her of such, and directed the County Attorney to draft a ballot question. A discussion followed on a bonding company and a recommendation from the CSIAC to go with a particular bonding company along with the minority opinion against. More discussion followed regarding advertising for Request for Proposals in the local newspaper, and methods laid out in the County's Procurement Policy regarding sole sourcing. The Commissioners felt that the process should be transparent for the benefit of the public and agreed to address the issue at an upcoming special work session on August 15, along with the ballot questions, for consideration of ballot language at the August 20 Board of County Commissioners meeting.

4:48 Commissioner Batchelder adjourned the regular session:

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

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS
OURAY, COLORADO

ATTEST:

Don Batchelder, Chair

Heidi M. Albritton, Vice Chair

Michelle Nauer, County Clerk and Recorder
By: Linda Munson-Haley, Clerk of the Board

K. Keith Meinert, Member