

**A RESOLUTION OF THE
OURAY COUNTY BOARD OF ZONING ADJUSTMENT
SUSTAINING AN APPEAL OF AN ADMINISTRATIVE DECISION
FILED BY CONNIE L. WURST**

WHEREAS, on or about June 17, 2008, the Ouray County Planner issued a decision to Connie L. Wurst that a parcel of real property owned by Connie L. Wurst located at 19200 Highway 550, Ouray, CO ("Property") had not been formally subdivided and a building permit could not issue on the Property; and

WHEREAS, on or about June 20, 2008, Connie L. Wurst ("Applicant") timely filed an appeal of the administrative decision ("Application") pursuant to the provisions of Section 19.7 D (1) of the Ouray County Land Use Code ("LUC"); and

WHEREAS, notice of a Public Hearing on such Application was published on July 4th and July 11th, 2008 in the Ouray Plaindealer and on July 2nd and July 9th, 2008 in the Ridgway Sun and the Board of County Commissioners of Ouray County, Colorado, sitting as the Board of Zoning Adjustment ("Board") held a public hearing on the Application on July 15, 2008 at 11:15 a.m.; and

WHEREAS, on July 15, 2008, the Board reviewed the Application and supporting materials, the Staff Report and heard statements on behalf of the Applicant; and

WHEREAS, no evidence was presented by the Applicant at the public hearing to show how the Property was originally created and to show that Highway 550 adjacent to the Property was a separately created parcel; and

WHEREAS, at the conclusion of the public hearing, the Board made a motion to overturn the administrative decision of the Ouray County Planner and sustain the appeal, provided that the Applicant provided a deed to show that Highway 550 was in separate ownership, thereby creating the Applicant's parcel; and

WHEREAS, the Applicant has supplied a deed dated October 27, 1937 from Fred Scala to "The County of Ouray, a quasi-corporation and a political sub-division of the State of Colorado", transferring a 125-foot right-of-way for highway purposes along the Property currently owned by the Applicant, which deed was recorded by the Ouray County Clerk and Recorder on November 23, 1937 ("Right-of-Way Deed"), a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A"; and

WHEREAS, based upon the statements in the record, the Application, and the deed supplied by the Applicant, the Board finds that the administrative decision made by the Ouray County Planner was in error; and

WHEREAS, the Applicant requested that the fees required for the appeal be waived;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, SITTING AS THE BOARD OF ZONING ADJUSTMENT, AS FOLLOWS:

1. The Board of Zoning Adjustment sustains the Applicant's appeal of an administrative decision by the Ouray County Planner and finds that the Property was created by virtue of the Right-of-Way Deed in 1937, prior to the adoption of the LUC and, therefore, such parcel is a buildable parcel under the terms of the LUC.

2. The fees paid by the Applicant shall be waived.

APPROVED AND ADOPTED THIS ____ DAY OF JULY, 2008 RATIFYING THE ACTION TAKEN BY THE BOARD ON JULY 15, 2008.

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Attest:

K. Keith Meinert, Chair

Don Batchelder, Vice Chair

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

Heidi M. Albritton, Commissioner Member

This Deed, Made this 27th day of October in the year of our Lord one thousand nine hundred and thirty seven, between

Fred Scala

of the County of Ouray and State of Colorado, of the first part, and The County of Ouray, a Quasi-Corporation and a political subdivision of the State of Colorado of the County of and State of Colorado, of the second part,

Witnesseth, That the said part of the first part, for and in consideration of the sum of One Dollar and other considerations Dollars

to the said part of the first part in hand paid by the said part of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed and Quit-Claimed, and by these presents does remise, release, sell, convey and Quit-Claim unto the said part of the second part, and its heirs and assigns, forever, all the right, title, interest, claim and demand which the said part of the first part has in and to the following described real property situate, lying and being in the County of Ouray and State of Colorado, to-wit:

A tract of land 135 feet wide for Highway purposes in the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) Section 34 Township 45 North Range 8 West T1M. P1M. lying 75 feet on the East side and 60 feet on the West side of the following described line to-wit: Beginning 720 feet South of the Northeast (NE) Corner of said Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) Section 34 at Engineer's Station 1535-15 and running thence North 90°11' West 50.5 feet. Thence on a Curve, right, radius 1637.1 feet, 656.7 feet; thence North 79°12' West 50 feet more or less to the North line of said Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) Section 34, containing 2.34 acres more or less. And also a tract of land 125 feet wide, for Highway purposes in the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) Section 35 Township 45 North Range 8 West T1M. P1M. lying 75 feet on the East side and 50 feet on the West side of the following described line, to-wit: Beginning 640 feet East of the Southwest (SW) Corner of said Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) Section 35 at Engineer's Station 1555-50 and running thence North 16°26' West 1319.7 feet, thence on a curve left, radius 1910 feet 81.4 feet, containing 4.02 acres more or less. Excepting and Reserving unto the Grantor and his heirs and assigns full and free right and liberty at all times hereafter to employ and use any and all portions of said right of way tract herein granted for the occupation by and maintenance of such irrigation ditches as it may be necessary for the Grantor to place thereon, subject however to the condition that the construction and maintenance of any and all such ditches therein shall not either by reason of the manner of construction thereof or the manner of maintenance, interfere with the use of said highway right of way herein granted for public highway purposes;

The GRANTOR herein named as Party of the First Part COVENANTS and WARRANTS that he has possession of the said tract of land herein granted as a Right of Way; that said possession has been peaceable and undisturbed and that his title thereto has never been questioned; that no person has any valid contract for the purchase of said premises; that there are no judgments, liens, mortgages, and/or Deeds of Trust in existence affecting the title to the aforementioned land except as follows:

That he has obtained the written consent of the lawful holders or owners of any and all said judgments, liens, mortgages, Deeds of Trust and contract of sale, to the granting of the Right of Way for highway purposes herein mentioned free and clear of any and all liens and encumbrances thereby created; that no actions or suits are pending in any Court affecting or purporting to affect either the title to or the possession of said property; and that no persons, partnerships, or corporations other than the Grantor herein named have or claim to have any right, title, or interest in and to said property included in the Right of Way herein granted or conveyed.

To Have and to Hold the Same, Together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the said part of the first part, either in law or equity, to the only proper use, benefit and behoof of the said part of the second part, and its heirs and assigns, forever.

In Witness Whereof, The said part of the first part has hereunto set his hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

Fred Scala (Signature) Seal Seal Seal Seal

STATE OF COLORADO,

County of Ouray, I, Eva T. Moulé, County Clerk and Recorder, in and for said County, in the State aforesaid, do hereby certify that

Fred Scala

personally known to me to be the person whose name is subscribed to the foregoing Deed, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Official Seal, this 27th day of October, A. D. 1937. My commission expires 19

Eva T. Moulé County Clerk & Recorder

Ouray County Seal Ouray, Colorado

Filed for record the 23rd day of November, A. D. 1937, at 2:14 o'clock A.M.

Eva T. Moulé RECORDER. Gladys Little DEPUTY.