

The Board of County Commissioners met in regular session on October 5, 2009. Those present for the session were Heidi M. Albritton, Chair; K. Keith Meinert, Vice-Chair; Lynn M. Padgett, Member; Mary Deganhart, County Attorney; Connie Hunt, County Administrator; and Linda Munson-Haley, Clerk of the Board.

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

**A. 9:08 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 one present for “Call to the Public” the Commissioners continued on to General Business.

**I. 9:08 General Business:**

**1. Request for approval of warrants:**

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

**2. Request for approval of September 28, 2009 minutes:**

*M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to approve the minutes for September 28, 2009 as presented. Discussion. Commissioner Meinert and Mary Deganhart had corrections to the minutes. Commissioner Meinert amended the motion to approve the minutes with corrections. Commissioner Padgett seconded the amended motion. With no further discussion, the motion passed unanimously.*

**3. Request for approval and authorization of Chair’s signature on the Intergovernmental Agreement (IGA) between Ouray County and the City of Ouray:**

The Commissioners had various concerns with the IGA regarding weed control, the need for transparency regarding the County’s future plans as it related to the clause that the City desired that the appropriate County offices and services continued to be maintained and provided within the City of Ouray, and the Gallagher Amendment.

*M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to approve and authorize the Chair’s signature on the Intergovernmental Agreement (IGA) with the City of Ouray as drafted. There was no discussion. Motion passed unanimously.*

**4. Request for approval and authorization of Chair’s signature on Winter Maintenance Agreement between Ouray County and Mount Sneffels Mining Company, LLC:**

Deganhart explained that she had forwarded the agreement to Mount Sneffels Mining Company for review. The Company’s attorney made a few minor changes.

Commissioner Padgett suggested including language in the document that photographs would be taken during the walkthrough. She was advised that Chris Miller already did that but she wanted to add the language to the agreement regardless.

Commissioner Albritton suggested that these issues were more internal processes. She suggested evaluation of the agreement for the Commissioners’ purposes but to keep those details at the administrative level. She pointed out that it took so long to get the agreements back when changes were made. The Commissioners directed Hunt to advise Miller of the Commissioners’ expectations.

Commissioner Meinert asked if the agreement was the same as the previous years’ agreements except for the addition of 1.G. Deganhart replied that it was. Commissioner Meinert clarified that the reason for 1.G. was to recognize that the work that the Ruby Trust people had been doing on the road was reducing the amount of work that Road and Bridge had to do by around 400 man-hours. It was a quid pro quo to provide County services to the same extent that Ruby Trust was providing services to the County by clearing the road in the spring. Commissioner Meinert clarified for the record that this was not an offer or commitment by the County to start providing winter maintenance on Camp Bird Road for one company.

*M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to approve and authorize the Chair’s signature on a Winter Maintenance Agreement with Mount Sneffels Mining Company, LLC as presented. Discussion.*

*Patrick Davarn asked about the location.*

*Commissioner Meinert replied that it was on County Road (CR) 361 for one mile from the switchbacks to the junction with CR 26 that takes over at Camp Bird, and CR 26 from there up to the Ruby Trust Mine.*

*Deganhart read from 1.a of the agreement, "including one mile of CR 361 from the switchbacks to the beginning of CR 26 and two and one-half miles of CR 26 to the Yankee Boy Basin."*

*With no further discussion, the motion passed unanimously.*

**5. Request for appointment of Lynn Padgett to the Multijurisdictional Housing Authority:**

**M/S/P**—*Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to appoint Lynn Padgett to the Multi-Jurisdictional Housing Authority replacing our current representative Don Batchelder with particular thanks to Don Batchelder for his service in that role. Discussion.*

*Commissioner Padgett requested a meeting at some point in the future, preferably during budget season, to go over the Regional Housing Authority proposed action plan to see if Ouray County could adopt it. A discussion followed as to when to schedule it.*

*Commissioner Meinert suggested scheduling it during a regular session to possibly take action.*

*It was scheduled for a special meeting of the Board of County Commissioners on October 13. Commissioner Padgett asked to invite Jen Coates. She recalled that Coates was on an extended vacation but thought she was due back on October 12. She would check with the Town of Ridgway to be sure.*

*With no further discussion, the motion passed unanimously.*

**B. 9:38 Ed Archuleta, Resident Engineer, CDOT:**

**1. Bear Creek Bridge Replacement Update:**

Ed Archuleta introduced himself as one of the resident engineers out of Durango for CDOT. The Bear Creek Bridge was on the select list. Currently, the highest priority on the list was Mineral Creek Bridge, which was scheduled for completion by next spring. The Bear Creek Bridge was scheduled for advertisement next summer. It was initially scheduled for replacement in 2013 but with FASTER (Funding Advancement for Surface Transportation and Economic Recovery) the project could be realized earlier. The bridge was determined to be functionally obsolete. The project was in the design phase right now with about 30% of the design completed and he planned to be at 90% by February. This would be a two-season project. CDOT would like to start construction next August and work through October, then shut down for the winter and do the actual bridge replacement in 2011. A lot of thought had gone into it. When scoped a few years ago, one option was to take out the rock knob on the north side. CDOT really did not want to do that and looked at other alignments, picking the minimum that could be fit in the tight curve. The span would not be lengthened. The designers listened to concerns about constructability.

He discussed the general specifications for the construction of the bridge replacement. The project would be done in phases. Next summer CDOT planned for rock excavation on the north hillside about six feet with possible rock bolting for stability. The south slope will be scaled and meshed, as well. The big thing for next season was that below the north abutment there was a cantilevered section of rock overhang that needed to be rock anchored, drilled and stabilized before coming back the next season for rock excavation. The anchors were grouted with epoxy grout and were sensitive to temperature so it needed to be done in warmer weather. In order to do that, crews would need a large crane so he anticipated that there would be road closures at night next season but hopefully before Labor Day. CDOT was very sensitive to road closures but it was a difficult site and a challenging job. The existing bridge would be temporarily widened on the north side to facilitate the staging for trucks for construction. There will be a six-foot shoulder that would make it safer for trucks to avoid backing.

In the first phase there would be temporary widening to the inside and traffic would be under a one-lane configuration controlled by lights. The first half of 2011 would be the most challenging. He was scheduling a meeting with the Colorado Contractors Association this month to get ideas for construction methods. He was looking at rapid construction. Phase 3 would be the demolition of the existing bridge with traffic on the new part at the end of 2011.

The project would enhance the parking area, putting in a new guardrail with a pedestrian sidewalk. There will be a cantilevered walkway so that people could appreciate the view. He planned to work with a landscape architect on ideas and concepts for this area that would include interpretive signage. He wanted to move the Otto Mears monument to that area and would be working with the historical group and the Forest Service to make it happen. There will be six-foot shoulders on both sides of the bridge. The existing width was about 24 feet. The new centerline from edge to shoulder will be 18 feet, resulting in a widening of 15 to 20 feet out over the edge of the chasm from the existing edge of the bridge.

Commissioner Padgett suggested a geological interpretive sign along with the other signs.

Archuleta reaffirmed that CDOT was very sensitive to the City of Ouray's concerns about the impact of this work on tourism. He received one comment from a City Council member that night closures were more acceptable than day closures. Regardless, there would be times that the road may have to be closed. Splitting the construction up into two seasons would help a lot.

Commissioner Meinert asked Archuleta to meet with the Commissioners again next year before the construction season began to give a briefing. Archuleta replied, "Absolutely." He would like to have a liaison contact with the City and County to keep everyone updated.

**I. 10:12 General Business, continued:**

**6. Request for approval to proceed with Lease Purchasing with AAIG for the courthouse capital improvement project (boiler replacement and related heating elements):**

Hunt submitted a revised memo to replace the memo in the Commissioners' packets. She explained that after she began working with AAIG on Thursday afternoon and Friday morning she had misgivings about the financing arrangements with respect to a modification of the amortization schedule for an annual payment instead of monthly payments and a difference in interest rates. She contacted Wells Fargo who quoted her a lower interest rate than AAIG based on an annual payment plan. She recommended not accepting AAIG's bid and working with Wells Fargo instead. Deganhart had issues with the contract from AAIG, as well. Hunt advised that Ennovate would be meeting with the Board next week to answer questions.

*M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to decline the proposed financing offer from AAIG and authorize Staff to proceed with the lease purchase financing through Wells Fargo as Connie Hunt has outlined to be finalized at the special meeting on October 13. Discussion. Commissioner Padgett added that rejection was based on the fact that the local Wells Fargo rate was .6% lower than the AAIG proposal and was in the County's best interest. With no further discussion, the motion passed unanimously.*

**C. 10:27 Jeanne Casolari, County Treasurer:**

**1. Request for approval to write off uncollectable taxes:**

Jeannine Casolari, Ouray County Treasurer, was present to request approval to write off uncollectable taxes listed in a memo to the Board of County Commissioners dated September 4, 2009.

Casolari related that she sent the Sheriff out last week on Account Number M708. When deputies went to the mobile home at the address listed there was no mobile home there and they could not find the people. So, she was asking to take it off to tax rolls.

On Account Number M465, she talked to two different relatives who said the mobile home was destroyed in 2008 and they had never told anyone. The owners were in Oklahoma and said they would not pay a cent. Casolari advised that the County was required to collect taxes up to the point of destruction of the home.

Commissioner Padgett asked if there was any sort of regulation or ordinance requiring that someone provide an official notification of destruction. Casolari said that it was a Certificate of Destruction and there were instructions at Land Use, in the Clerk's Office, and in her office. Commissioner Padgett asked if there was a penalty for not following this process. Casolari replied that it was hard enough to even collect the tax much less a penalty.

Casolari detailed the remaining properties listed in the memo.

Commissioner Meinert hated to write things off but from a practical standpoint it would cost the County much more to try to chase these down and collect on the small amounts involved than the County was likely to get in return.

*M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to authorize the Treasurer to write off the amounts she suggested because it was in the public's financial interests to not spend additional public funds in trying to collect uncollectible monies. Discussion. Deganhart asked to list the properties and amounts for the record. Commissioner Meinert replied that the Treasurer was proposing to write off Account Numbers M465 for \$25.12, M236 for \$51.72, M216 for \$5.40, P490 for a total amount of \$349.56 for taxes for the last five years because the Assessor had not been able to contact the company for five years, and Schedule M708 in the amount of \$18.82. With no further discussion, the motion passed unanimously.*

**I. 10:35 General Business, continued:**

Commissioner Meinert explained that this item had been on the previous agenda but he had asked to wait for discussion on these next two items when Commissioner Albritton could be present.

**7. Discussion and possible adoption of Resolution 2009-043 concerning adoption of a Code of Ethics / Code of Conduct for Ouray County Boards and Commissions:**

Commissioner Albritton asked if this draft Code of Ethics / Code of Conduct ("Codes") was the same as presented to the Planning Commission and had the Planning Commission had a chance to look at and discuss it.

Deganhart explained that she had tweaked it and expanded some of it. She added language about conflicts of interest and made it universal enough to be signed by all boards and committees. She suggested adding language to clarify the language about conflicts of interest and disclosure and recusal, "...agree to abide by statutory requirements for standards of conduct."

Commissioner Meinert suggested citing the statutes and including the citation or a summary in the Codes.

Commissioner Albritton suggested that the Board of County Commissioners also sign the Codes. All agreed. Commissioner Padgett suggested going to each board and committee to explain the Codes in person. Commissioner Albritton agreed but wanted to wait until the first of the year. The Commissioners agreed to implement the Codes in 2010 with all boards and committees.

The Commissioners had further suggested changes to the Codes that addressed conflicts of interest, ex parte communications and recusals. Deganhart would make the appropriate changes and bring back to the Board for approval and adoption.

*M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to table action pending Deganhart's revisions. There was no discussion. Motion passed unanimously.*

**D. 11:07 The Board of County Commissioners will convene as the Board of Health:**

**1. Public Health Update by Cheryl Roberts, Public Health Director:**

Public Health Director Cheryl Roberts advised the Board that Public Health had held seasonal flu clinics and gave 31 vaccinations last Monday. There was a children's flu clinic for children and their parents and 38 vaccinations were given at that time. There would be a big flu clinic on Wednesday at the Ouray County 4-H Event Center that would get the major part of the population.

Ouray County Public Health had not received the H1N1 vaccine yet. She expected the first batch, the nasal mist for the population aged 0 to 5 and for caregivers, next week. This was a live vaccine and not many people wanted the live vaccine. She did not have a date on the inactivated vaccine yet. The H1N1 clinics would probably be held at the Public Health building. In the first 2 or 3 weeks of school about 53 students were out with flu-like symptoms but the number was down now.

Commissioner Meinert asked about the difference between the vaccines and TAMIFLU. Norm Rooker explained that the vaccine was preventative and TAMIFLU was the after-the-fact treatment. Roberts further explained that the seasonal vaccine was what was always available and was reformulated each year to match what people had last year. The only reason for the live vaccine was to take it nasally. The vaccine for H1N1 was produced in the same way but had the virus for H1N1 and was provided in both ways. TAMIFLU was an antiviral given orally in capsule form and was effective once the symptoms were present to shorten the duration and intensity of symptoms.

Roberts had several contracts for the Chair's signature. The Commissioners advised that because the contracts had not been noticed on the agenda they should be put on a future agenda for approval and signature unless urgent, in which case Roberts could get the Chair's signature and the Board would ratify the contract at the next meeting.

**11:29 The Board of Health reconvened as the Board of County Commissioners:**

**F. 11:29 Allan Gerstle, Social Services Director:**

**1. Discussion of Governor's Action Committee Recommendations:**

Allan Gerstle had provided the Board with a copy of the original recommendation and an article from the Grand Junction newspaper. He distributed a copy of a letter he had received from CCI on Friday afternoon that went to the Governor and referred to an email from Larry Kallenberger, Executive Director of CCI, to the Commissioners. He explained that this recommendation's effect was so large in the way the counties operated. He noted that Deganhart had brought up a key point, the legal issue. If this was to become a regional system or a state system would they give the legal responsibility to the State Attorney General's office?

Commissioner Meinert asked why a child welfare committee was proposing a total reorganization of Social Services in the state.

Gerstle explained that in 2005 there were thirteen deaths of children in the state of Colorado who had previously been known to Social Services. It became a media situation. In response to those deaths Governor Ritter appointed a Child Welfare Action Committee that consisted of 20 plus people headed by Karen Beye, Executive Director of the Department of Human Services. Four subcommittees were formed. The Structure Committee came up with these recommendations that were adopted by the full committee a week ago. They hit the Directors' network about ten days ago. Beye and her staff were driving the bus to some degree. Two members of the committee were high executives in Human Services / Social Services in Denver. There were no Western Slope representatives on the Structure Committee and few small rural representatives.

Commissioner Meinert supported Gerstle's concerns but felt there was nothing the Commissioners could do more than what CCI had done. He read from the CCI letter, *"This wide, far reaching recommendation proposed to fundamentally and radically alter the organizational structure for delivering child welfare and other human services in Colorado. Frankly, we are shocked at the secrecy surrounding the process and its outcome leaves Colorado Counties, Inc. in disbelief that your administration would operate in this manner."* Commissioner Meinert added that the Commissioners supported all of the comments that CCI made in the letter.

The Commissioners talked about a support letter from Ouray County and Commissioner Albritton suggested that they wait until after the CCI Legislative Committee meeting on Friday that she would be attending.

Gerstle suggested that Ouray County meet with other Commissioners to see if all were in agreement then suggest letters from the Western Slope counties addressing rural concerns. And, certainly, when talking to legislators, everyone should express their concerns.

Gerstle clarified for the record that the recommendation made by the Governor's Action Committee [*and the point of controversy*] was for State takeover of Social Services and having regional offices operate Social Services.

Commissioner Padgett suggested that Gerstle send an email to the Chair detailing his thoughts and talking points, and Deganhart's legal piece, for her to take to CCI.

**12:06 The Commissioners recessed for lunch and reconvened at 1:37:**

**G. 1:37 Request for adoption of Proclamation #2009-002 proclaiming the month of October as "Domestic Violence Awareness Month":**

*M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to adopt Proclamation 2009-002 proclaiming the month of October as "Domestic Violence Awareness Month" as presented. There was no discussion. Motion passed unanimously.*

Angela Mackey and Shelly Fellin, Advocate in Montrose representing Ouray County, with the Tri-County Resource Center (TCRC) explained that TCRC was a part of Hilltop. They had access to safehousing and provided advocacy and support, outreach, education and prevention for Delta, Montrose and Ouray Counties. They provided the Board with statistics for Ouray County. In Ouray County TCRC safehoused one resident and had 28 crisis calls. There was one volunteer who logged 2,782 hours. They had done two presentations. They recorded 8 resident outreach and 12 advocacy calls. There would be a Domestic Violence Forum on October 27 at the Holiday Inn Express in Montrose from 9 to 11 a.m. and in Delta from 1 to 3 p.m. at the Bill Heddles Rec Center. Program Coordinator Becky Ela would be on the panel. TCRC now had an official advocate out of Ouray.

**H. 1:47 Hélène Cassarini, Director, Juvenile Diversion Program:**

**1. Juvenile Diversion Program Update:**

Hélène Cassarini ("H") with the Juvenile Diversion Program met with the Board to request money for her annual budget and to give an update on the program and services. She presented a written report for the Board.

She explained that Juvenile Diversion (JD) offered kids who were first-time offenders an alternative to a criminal record. In 2007, 83% of the clients completed the program successfully and three youths reoffended. In 2008, 85% of the clients completed successfully and four clients reoffended. JD sponsored an after prom party with 120 kids who came and stayed throughout the night. JD teamed up with the Voyager Youth Program for a middle school boys and girls lunch group where they talked about current life issues. JD did four highway cleanups in Ouray County this year. H advised the Board that JD held a drug and alcohol prevention meeting for parents in Ouray County but no one came. JD decided to put out a community survey with Voyager to learn if people knew what services were available. She concluded that she only had nine referrals in Ouray County in 2008 but already had six Ouray kids this year.

Commissioner Padgett asked about case studies. H explained that she met with kids once a week, checked on attendance, met with the families, farmed out counseling, did drug testing, and went with the offenders to deliver apology letters. She worked 35 hours a week and Shannon worked 25 hours a week in both San Miguel County and Ouray County. They met individually each week one-on-one with each kid. Travel was an expense because they generally went to Denver for training. Rent was free in San Miguel County and in-kind here in Ouray. The adjunct services for youth had gone down because of cuts in the budget.

Commissioner Meinert asked H to walk through a typical cycle.

H described a scenario of a kid at the Mountain Market before school who grabbed a sandwich and a Coke and left. In this scenario a witness saw the child walking out, grabbed the child and called the police. The police would talk with the child, contact a parent, and contact JD to determine if the kid was appropriate for the JD program. If it was determined that it was an appropriate referral, the police had to refer the kid within five days. JD would then get the police report, which usually takes more than five business days, do an hour-and-a-half intake with the offender, do a mental health screening that may result in other screenings such as suicide assessment. She and Shannon do the assessments. She pointed out that she had a master's degree in counseling and Shannon had numerous amounts of training. If through the suicide assessment they decide that the offender needs the Center for Mental Health they call the on-call crisis hotline and the child gets screened by them. In a typical session if the child has adequate support at home and is going to school most of the time, and it is decided that the child is appropriate for JD, the child signs a contract, there's drug testing, counseling, and the child agrees to stay on top of assignments and attendance, the child writes an apology letter to Mountain Market and she and the child deliver it, the child has 16 hours of community service and pays an admin fee. JD's community service is a little less than what the Court would require. After the initial meeting, they meet with the child once a week either at school or after school for an informal meeting that could take between fifteen and forty-five minutes. They check on the child's grades and attendance. They try to be the glue

and stay with the child for six months counseling them on what was appropriate for their age group, situation, etc. If everything goes well they will have one or two parent meetings, maybe one or two school meetings, and do a little community service with the offender who will then do the rest on his or her own. In six months if they completed all of the requirements that were agreed to the child is done with JD with no record. If the child reoffends then JD goes back to the drawing board to see if life situations have changed, if the child is with Social Services, etc. Once JD takes all of that into consideration they either send the child to court for the first and second offense, or send them for the second offense only. Once this happens, Juvenile Services will follow the child through the courts until sentencing. The Community Evaluation Team that she and Shannon are part of assess the child's case and make recommendations to the judge for sentencing.

She and Shannon meet quarterly with the regional JD programs to compare programs to ensure that everyone is doing basically the same thing.

Commissioner Meinert discussed the allocation of revenues.

The Commissioners would discuss H's funding request and get back to her.

**E. 2:22 Presentation of Draft 2010 budget, and request for authorization to publish a Notice of Public Hearing pursuant to C.R.S. 29-1-106:**

Connie Hunt, County Administrator, presented a draft budget and noted that it was balanced and included things discussed at a workshop such as a 1% bonus merit, existing lease purchase items and new capital items. She wanted to discuss it further on October 26.

Commissioner Meinert wanted to have a discussion on the budget policy in a work session.

*M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Padgett to authorize the publication of a Notice of Public Hearing on the Draft 2010 budget pursuant to C.R.S. 29-1-106. There was no discussion. Motion passed unanimously.*

**I. 2:35 General Business, continued:**

**8. Discussion and possible adoption of Resolution 2009-044 concerning adoption of a policy regarding the conduct of work sessions:**

Commissioner Meinert explained that, because they were reacting to complaints that had been lodged, the Commissioners wanted to reevaluate how they conducted business to be as open and transparent as possible. If the Commissioners were going beyond the statutory requirements he did not want to tie their hands so tightly that if they could not follow the process they would get into difficulty. He suggested a fairly simple change to say that the Board would comply with statutory requirements but would "endeavor" to go beyond the statutory requirements by noticing more days in advance and posting the notice in other areas; however, failure to do so would not invalidate any of the proceedings. He agreed that the Commissioners should try to record the work sessions but he suggested adding "when practical".

Deganhart suggested language to say that publication of work session meetings would be on a case-by-case basis.

There was discussion on when work sessions would be recorded and if the files should be put on the website.

Commissioner Albritton suggested recording now and making a decision about putting the files on the website at a later date once the revamp of the website was completed.

Commissioner Padgett wanted a workshop to discuss the legal pieces.

Regarding the new website that was under construction, Hunt asked that Commissioner Padgett check with I.T. to ensure there was sufficient bandwidth and capacity. She expressed concern about putting work session audio files on the website and not minutes audio files. Commissioner Albritton suggested that the Board revisit the issue in six months to discuss the transitioning to posting recordings on the website.

Deganhart would make the changes noted above and bring the resolution back at the October 26, 2009 meeting. She suggested a *Whereas* clause that the public had some responsibility to avail themselves of the tools offered by the County.

The Commissioners directed Staff to begin the recording of work sessions tomorrow.

By consensus, the Board agreed to the changes.

**J. 3:18 Land Use Items:**

**1. Bruce Phillips Exemption:**

Applicant: Kay Ary, Patty Masker, Judy Ferguson  
Location: Section 21, Township 45N, Range 8W, N.M.P.M.  
Purpose: Request exemption from definition of subdivision

Mark Castrodale, County Planner, and Michelle Haynes, Planning Technician, were present. The Applicants were not present.

The Board was in receipt of a Staff Report dated July 16, 2009.

Castrodale distributed a full-sized version of the plat that had been provided in the Commissioners' packet and summarized the request. The applicant/owners were Kay Ary, Patricia Masker, and Judy Ferguson. He advised that he had informed them of the meeting. They own a 70-acre parcel, Lot 3 of the Loughter Place Subdivision that was approved in 1996. Even though the plat said that it was a subdivision it was not a county subdivision; it did not go through the County process. The property was located in Section 21, Township 45N, Range 8W, N.M.P.M, or approximately  $\frac{3}{4}$  to 1 mile south of Ridgway on CR 23. The address was 5276 County Road 23. The subject parcel was in the Valley Zone and in the Area of Influence. The Applicants were applying for an exemption under Section 17.2 of the Ouray County Land Use Code. To be clear, today the Applicants could subdivide the 70-acre parcel into two 35-acre parcels by just going through the statutory process without any County oversight. The Applicants were applying to make two lots, one conforming (Lot 3A of 41.73 acres) and one non-conforming (Lot 3B of 28.27 acres), using the centerline of the river as the new boundary line. Per Section 17, the Board can grant an exemption if the applicant meets the requirements of Section 17.3.A. requiring the applicant to convey real property to the County, which the Applicant is not doing. It would then go to Section 17.3.B. that has ten specific criteria. Because this was in the Area of Influence there was a meeting with Ridgway Area Joint Planning Board on August 18, 2009. At the conclusion of the meeting the Joint Planning Board moved to approve the exemption on the basis that there was a natural geological feature that warrants the subdivision with five conditions: 1) an easement agreement is completed for Lots A and B and documentation provided to staff; 2) add the appropriate plat notes regarding the requirement for engineered septic and foundations as required for all lots; 3) all construction shall be set back from the floodplain on both Lots A and B; 4) the Applicant has the appropriate plat note placed on the plat stating that the property is in the visual impact corridor and compliance is required; and 5) final plat should show the ditches and easements and a plat note.

Notification postcards were sent out to adjacent property owners on July 22, 2009. The Joint Planning Board reviewed the application on August 18, 2009.

Castrodale advised that access was in place for Lot 3A and the easement is shown on the plat. The recommended plat notes were included in terms of engineered septic and foundations, visual impact, the ditch plat note, and the required setback from the floodplain. It was Staff's opinion that special circumstances did exist, that the granting of the exemption would not be detrimental to the public welfare or injurious to other property rights, and that the granting of the request was consistent with and secured the objectives of the Land Use Code. Staff recommended approval of the application for the Bruce Phillips Exemption with two conditions: 1) the Applicant shall record proper easements (2) to secure access off of County Road 23 for Lot 3B and said easement shall be recorded prior to recordation of the final plat; and 2) the Applicant shall modify the visual impact plat note to read as follows, "*Any construction in Lots (3A & 3B of the Bruce Phillips Exemption will be subject to Ouray County Visual Impact Regulations per Section 9 of the Land Use Code.*" Finally, Staff recommended that the Applicants obtain the necessary utility easements prior to recording the final plat and they verbally agreed. This was not a condition of approval. The purpose was to make sure that those future owners of Lots A and B had legal access. Deganhart added that if Lot 3A was sold and there were no easements in place, the subsequent owner of Lot 3B would not be able to cross Lot 3A to build a bridge across the river. This was just to ensure that there was access to both properties.

Commissioner Padgett explained that one issue she had was where the floodplain would be moving and secondly, she asked if the County had any required setbacks for irrigation ditches. Castrodale replied, "No." Commissioner Padgett asked if there was a valid building site. Castrodale replied that the building site would be fairly small but the property was terraced enough to build on the southern end of the property.

Commissioner Padgett noted that if the Commissioners were doing the exemption and going through the County process but there was not a good building site, she personally wanted to feel good that it was a buildable property and everyone's rights had been recognized and not put into jeopardy by the County's action of accepting the exemption. There was some discussion about defining a building envelope and building in a floodplain.

Commissioner Meinert felt that there were inherent benefits in granting this exemption. One was hopefully preventing bridges across the river. Another one was allowing both parties to maintain their banks of the river. He was testing a possible third benefit of preventing the owner from building within the floodplain. Deganhart cited Section 10.5.C. of the Land Use Code pointing out that there was a pretty lengthy regulation on building in a floodplain and Paul Christensen, Ouray County Building Official, reviewed it. Commissioner Padgett noted that the County's regulation did not put a number on the setback but Commissioner Meinert pointed out that was a benefit to putting a condition on the exemption. A discussion followed on setbacks from irrigation ditches and how it applied to ditch companies. Commissioner Padgett offered that a typical setback was 25 feet from a ditch. Commissioner Meinert explained that his point was that there may be technical issues or concerns that should be covered by imposing conditions on the approval but not to prevent the public from enjoying the benefits it might get by granting this exemption. Commissioner Padgett stated that she was not quibbling about the benefits of a setback from the floodplain but was concerned that the river was active and was concerned about the Board accepting a parcel that may or may not have a viable building envelope. She did not have enough information to feel as comfortable as she would like that the 25-acre lot had a decent building envelope on it. Deganhart asked what she would need in order to move forward. Commissioner Meinert added, and would that be more than what the County would require in any PUD or subdivision process. Deganhart noted that the problem was that Section 17 did not require it and the Applicant(s) had met the requirements of that section.

Commissioner Padgett asked if the Applicant(s) could get a well permit for less than 35 acres. If this lot was intended for future residential purposes did it have utility access? How would it get water? Could they get a domestic well for

less than 35 acres or did they have to get Tri-County domestic water. Was the county allowing a lot to be created that was not viable? In order to address some of these concerns the Applicant(s) would have to show will serve letters for utilities.

Commissioner Albritton saw that the Commissioners had two options: 1) place conditions in the motion, or 2) table any action and ask the Applicant(s) to come to the Board to verify.

Commissioner Padgett personally wanted to ask for more information rather than approve it conditionally. A discussion followed as to what path to take, conditions or tabling.

Commissioner Meinert suggested outlining what information was needed for Staff to go back to the Applicant. He did not want to be in the position of appearing to throw roadblocks in front of an applicant or of passing up an opportunity for an exemption that would yield other benefits for the public.

Commissioner Padgett did not want to condition it in such a way that would be unworkable.

Commissioner Albritton outlined that the Commissioners wanted proof of potable water, either through a qualified well or providing a commercial source for the potable water, and wanted assurance that there was a high and dry "setbackable" building envelope set back from the floodplain some distance recognizing that the floodplain was highly active. Castrodale asked if that confirmation would be in the form of an engineer's report. Commissioner Padgett acknowledged that would be preferred. Castrodale asked about the ditches. Commissioner Padgett replied, if possible, the Applicant(s) would provide a letter saying that the ditches did not have any special considerations. Deganhart pointed out that the ditch plat note addressed some of that as far as not interfering with maintenance. Commissioner Padgett added that the ditches were the lesser of her concerns.

Commissioner Meinert pointed out one additional benefit to the County was that currently from the attached Assessor's statement, the entire 70 acres were valued at \$1,000 so it obviously had an ag exemption. Once the parcel was split up, Lot 3B would not be qualified for ag exemption and would be vacant land until it was built on. Commissioner Meinert had prior pointed out that the irrigation ditches on the lot in question terminated on that lot and, therefore, Commissioner Padgett argued that it could possibly still qualify for ag.

***M/S/P**—Motion was made by Commissioner Padgett and seconded by Commissioner Meinert, in the matter of the Bruce Philips Exemption request located in Section 21, Township 45N, Range 8W, N.M.P.M., to table the item until November 2, 2009 and request through Staff that the Applicant(s) provide the Board with assurance of a domestic water source, either a well or water utility, and assurance preferably through an engineer that a viable building envelope and septic location existed on proposed Lot 3B. There was no discussion. Motion passed unanimously.*

## **2. Discussion concerning Cornerstone Amended Development Agreement:**

Commissioner Albritton explained that she had asked the County Attorney to look into a matter involving Cornerstone and that a Staff Report from Mark Castrodale addressing it had been provided. She wanted Cornerstone to know that the County was keeping tabs on activities there.

Commissioner Padgett point out that Cornerstone was technically a lot owner and therefore everyone was their guest.

Commissioner Albritton replied that it was never anticipated that public use would be a factor of Cornerstone's operation.

Deganhart recalled that in September 2007 with the second amendment to the Development Agreement (DA), Cornerstone representatives met with the Commissioners to discuss some scenarios about why they wanted to expand who could purchase things but it was written to include the owner, meaning Cornerstone who could have guests, and the reason for that at that time was basically for prospects. If an owners wanted to stay who did not have houses they could stay in the cabins.

Commissioner Albritton countered that the advertising suggested that it was a public golf course by inviting the public to play a round of golf.

Commissioner Meinert recalled that when the request was considered in 2007 and Cornerstone representatives asked for an amendment to allow guests to pay directly by credit card or cash for these amenities if they were guests of a valid lot owner, it was recognized at that time that this might give Cornerstone or subsequent owners the opportunity to gain the system. The checks and balances to make sure they did not gain the system were in Section 1.1.3, page 4, of the "Second Amendment to the Amended Development Agreement" that required that the owner "submit a written report to the Ouray County Land Use Administrator detailing all guest charges and use of the Short-term Accommodation Units for the prior year..." It went on to say, "If County determines, in its sole discretion, that the Guest charges and use of the Short-term Accommodation Units violate the terms of this Agreement or the provisions of Section 25.5 of the Ouray County Land Use Code relating to Commercial Use..." then the County could unilaterally terminate the arrangement for purchasing goods and services.

Castrodale advised that he had asked Cornerstone for that report by October 15, 2009 and that would be the vehicle for the County to implement this portion of the agreement to unilaterally decide that it was not in keeping with the noncommercial nature and pull this part of the provision that allowed guests to pay directly.

Commissioner Meinert explained that he was less concerned about Cornerstone gaming the system than some subsequent lot owner gaming the system and not complying with the noncommercial nature of the DA.

Deganhart suggested that the Board might consider modifying the language to have specific exclusions.

Commissioner Albritton added that her underlying concern related to what the economy was now as opposed to when the DA was negotiated and that Cornerstone may have changed its strategy to get more buyers. She wanted to stay on top of it because Cornerstone had seen a lot of changes in staff.

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Castrodale stated that he received Section 6.12 from the Planning Commission. He distributed a copy of the minutes, a resolution and a draft.

Deganhart asked, process-wise, if the Commissioners wanted to schedule a work session, a public meeting, or a public hearing. Commissioner Padgett suggested a brief work session and then set a public hearing. Commissioner Meinert suggested that if nothing material had changed in this draft version from what was submitted to Planning Commission then it should be ready to go directly to a public hearing.

The Commissioners set a public hearing for 2:00 p.m. on November 2, 2009.

**4:28 Commissioner Albritton took a brief recess and reconvened at 4:35:**

**K. 4:35 Commissioner Padgett:**

**1. Website Update:**

Commissioner Padgett showed the other Commissioners a presentation of the proposed website.

**L. 5:19 Administrative / Commissioner Reports:**

**Connie Hunt**, County Administrator, discussed the following:

- 1) **Wells Fargo Savings** The annual payment would be \$23,832.95 that represents a savings of \$8,500 annually times 10 for a savings of \$85,060.
- 2) **Work session on October 26** A follow-up lunch staff work session with Noelle Hagan had been planned for October. She asked how the Commissioners wanted to handle lunch. Commissioner Albritton suggested a potluck.

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

- 1) **Board vacancies** There were two vacancies on the Right-to-Farm Agricultural Review Board that had not been filled through previous notices in the newspaper. She asked for direction to fill the vacancies. The Commissioners decided to operate with just the two members that were currently on the ARB. If and when the ARB was called upon for a review, the Commissioners would fill the vacancies at that time.

**Mary Deganhart**, County Attorney, discussed the following:

- 1) **Horsethief** There was discussion of scheduling an executive session and formulating a reply to Sunderland. Language in Resolution 2008-024 provided for a 30-day notice to be sent to the owner of record by certified mail requiring the removal of an obstruction of a public road or highway. She recommended sending a notice to Horizon Ranch as a prerequisite to moving forward with any other action. She asked for the Board's approval to do that. The Commissioners wanted further discussion in executive session of what the implications of sending the letter would be. The Commissioners discussed when to schedule the executive session and settled on October 19. A special meeting had already been scheduled for October 19 for Section 9 and the Regional Housing Authority. A work session was scheduled for October 20. Commissioner Albritton recapped that there was a work session tomorrow and on the 13<sup>th</sup>, the 19<sup>th</sup>, 20<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup>. A Club 20 Caucus was scheduled for October 29 at 5:00 p.m. and the Water Summit on October 30.
- 2) **Camp Bird press release** Last week the Commissioners had requested a press release on the outcome of the Camp Bird case. She had a draft for the Board's review.
- 3) **Kinder Morgan and CR 17** She just wanted to keep the Board apprised of attempts to get Kinder Morgan to do remedial work on CR 17 per a special use permit from 2003.
- 4) **Medical marijuana dispensaries** Ouray County had no regulations in the Land Use Code to address medical marijuana dispensaries. Colona would be the only place under the Land Use Code where it would be possible. She suggested that the Commissioners think about possible regulations.
- 5) **Tower cases** The Court consolidated the other case into our case. The record on the Tower II case was due to the court on November 2.
- 6) **OHV age restrictions** This was a Parks Board regulation not a legislative issue, and changes needed to be made through the Parks Board.

**Commissioner Meinert** discussed the following:

- 1) **GEO Regional Sustainability Meeting** San Miguel Power Association, Inc. sent out a notice about a meeting on October 14 at 1 p.m. to set up a regional sustainability committee with Montrose County and

Delta County. He sent a note to everyone about a meeting he had with TNCC at the Ridgway Town Hall where he reiterated the desire of San Miguel County and Ouray County to form a regional group under TNCC along with the municipalities and San Miguel Power Association, Inc. There was a conflict between TNCC and SMPA. He wanted to attend the meeting. He was fearful that if SMPA had its way and moved forward the group would encompass a huge region that may not be responsive to Ouray County's needs. He asked for confirmation that the other Commissioners felt that a smaller group was to Ouray County's advantage, that Ouray County would argue on behalf of a smaller group, and that he should take that position with SMPA. Commissioner Albritton agreed. Commissioner Padgett wanted to attend, also, and wanted Commissioner Meinert to represent that position.

There was a reminder of the Town/County IGA work session on October 14 at 5:30.

- 2) **CR 1 public forum** He wanted to set a date and discuss the format for a CR 1 public forum. Because of the lateness of the hour, the item was scheduled on the agenda of October 13. Commissioner Padgett suggested holding it at the Clubhouse at Fairway Pines. Commissioner Meinert suggested the fire house as a possibility. Further discussion would be had on October 13.

**6:00 The Board of County Commissioners adjourned:**

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS  
OURAY, COLORADO

ATTEST:

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Heidi M. Albritton, Chair

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K. Keith Meinert, Vice-Chair

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

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Lynn M. Padgett, Commission Member