

**A RESOLUTION OF THE  
OURAY COUNTY BOARD OF ZONING ADJUSTMENT  
GRANTING A VARIANCE FOR BLACK & VEATCH AS AGENT FOR  
DALLAS CREEK WATER COMPANY**

**WHEREAS**, on September 2, 2008 the Board of County Commissioners of Ouray County, Colorado adopted Resolution 2008-048 approving an application for a Special Use Permit ("SUP") for Black & Veatch Corporation as agent for Dallas Creek Water Company, Inc. ("Applicant") for an eighty-foot (80) monopole communications tower and accessory structure on property identified as 465 Tower Road, Ridgway, CO ("Property"); and

**WHEREAS**, the approval of the SUP included a condition that the approved SUP would require the Applicant to submit a building permit application and comply with the provisions of Section 19.3 of the Ouray County Land Use Code ("Code") for the issuance of a building permit; and

**WHEREAS**, Section 19.3 states that "No building permit shall be issued within a Planned Unit Development approved after the date of the adoption of this Code without prior approval of the architectural control committee or other internal enforcement body..."; and

**WHEREAS**, on or about November 10, 2008 the Applicant submitted its application for a building permit for the communications tower and accessory structure and on November 12, 2008 the building permit application was denied as a result of the Applicant not receiving prior approval of the Architectural Control Committee for Loghill Village Unit 1; and

**WHEREAS**, on November 15, 2008, pursuant to the provisions of Section 19.7 D(3) of the Code, the Applicant timely submitted an appeal of the administrative decision to deny the building permit application; and

**WHEREAS**, a public hearing on the appeal was scheduled for April 27, 2009 and public notice of such hearing was published in the Ouray County Plaindealer on April 10, 2009 and April 17, 2009 and in the Ridgway Sun on April 8, 2009 and April 15, 2009; and

**WHEREAS**, at the public hearing on April 27, 2009, the Board of County Commissioners of Ouray County, Colorado, sitting as the Board of Zoning Adjustment ("Board"), reviewed the Staff Report, materials submitted by the Applicant, written public comments, heard statements from the Applicant and the Ouray County Planner and took public comment; and

**WHEREAS**, the Board received evidence that the Applicant had originally received approval from the Loghill Village Unit 1 Architectural Control Committee; however, at a later date, such approval was rescinded; and

**WHEREAS**, there are three other communications towers and two large water tanks that already exist on the subject property; and

**WHEREAS**, the Board heard testimony about the difficulties of communication in Ouray County because of the terrain and topography and that the Property and its location make it peculiarly well suited for the placement of the communications tower; and

**WHEREAS**, the Board heard testimony and public comment about the need for enhanced communication in Ouray County, particularly from a law enforcement, public safety and emergency medical services aspect as there are many locations in Ouray County where such communication in an emergency is impossible; and

**WHEREAS**, there are compelling health, safety and welfare issues related to the construction of the communications tower; and

**WHEREAS**, the criteria contained in Section 19.7 D(3) for a variance includes the following: "Where, by reason of...other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this Code would

result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to said property, a variance from such strict application so as to relieve such difficulties or hardship, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Code.”; and

**WHEREAS**, the Board heard testimony by the Emergency Services Coordinator about the location and exceptional situation or condition that impacts the subject property, making it uniquely suited for this particular application; and

**WHEREAS**, the Board heard testimony by the Emergency Services Coordinator that feasibility studies and modeling performed on the subject property and eleven (11) other locations within Ouray County, that were selected for study because of their favorable characteristics, found that the subject property alone was most suited for this particular application, in part due to the topography of the surrounding landscape; and

**WHEREAS**, the Code should be construed as a whole to give consistent, harmonious and sensible effect to all of its parts; therefore, the term “owner” used in Section 19.7D(3) must be read more broadly in order to give effect to other language that states that any “person aggrieved” may appeal to the Board of Zoning Adjustment; and

**WHEREAS**, the strict application of Section 19.3 requiring architectural control committee approval will result in peculiar and exceptional practical difficulties to the Applicant by its inability to obtain a building permit for the construction of the communications tower; and

**WHEREAS**, the Board takes seriously the desires of the residents of a PUD or Subdivision as expressed by its architectural control committee and/or homeowners’ association and may override the requirement for architectural control committee approval under Section 19.3 of the Code only in exceptional circumstances of public health, safety and welfare and in accordance with applicable Code requirements; and

**WHEREAS**, the Board finds that a variance may be granted in this instance without substantial detriment to the public good and without substantially impairing the intent and purpose of this Code;

**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. Based upon the findings stated above, the Board grants the variance as requested by the Applicant and reverses the decision of the Ouray County Planner denying the issuance of a building permit as a result of the failure of the Applicant to obtain prior approval of the Loghill Village Unit 1 Architectural Control Committee.
2. The Board finds that the health, safety and welfare of the residents and visitors of Ouray County is paramount and that a variance to the requirement of Section 19.3 does not substantially undermine the public good and does not impair the intent and purpose of the Code. This decision should be construed as considering the unique circumstances of the exceptional situation of this property coupled with the urgent need to improve emergency communications at this time both within Ouray County and connections to the State of Colorado emergency communications system. This decision is not intended to establish a precedent on the need for architectural control committee approval prior to issuance of a building permit and any such applications for variance will be determined on their own merits.

UNANIMOUSLY APPROVED THIS 11<sup>th</sup> DAY OF MAY, 2009, RATIFYING ACTION TAKEN ON APRIL 27, 2009.

BOARD OF COUNTY COMMISSIONERS OF  
OURAY COUNTY, COLORADO SITTING AS  
THE BOARD OF ZONING ADJUSTMENT

Attest:

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Heidi M. Albritton, Member

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K. Keith Meinert, Member

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

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Lynn M. Padgett, Member