

The Board of County Commissioners met in a Work Session on July 8, 2010. Those present for the session were County Commissioners Lynn M. Padgett, K. Keith Meinert and Heidi M. Albritton; Linda Munson-Haley, Clerk of the Board; and the Planning Commission.

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

6:40 The Board of County Commissioners convened into a work session for a technical discussion with building/design professionals about proposed visual impact modifications.

A sign-in sheet was entered into the record as *Exhibit A*.

John Peters distributed a report called “Ad Hoc Impact Review Committee” (*Committee Exhibit A-1*). A copy of the Committee’s PowerPoint presentation was included in the record (*Committee Exhibit A-2*).

Commissioner Padgett opened the meeting and made introductions. All of the Planning Commissioners were in attendance. She explained that the Commissioners had invited representatives from the builder/developer/architect/designer communities to meet with them. An ad hoc committee was formed from that group that included Larry Coulter, Doug Macfarlane, John Peters, Randy Gardner and Larry Kumpost. She explained that at a work session in June the builder community told the Commissioners that they should hear specific input from their group. The Commissioners began having work sessions last October to understand the purpose, objectives and goals of the current Section 9. They had heard many comments for years about the current section. At this point, the Commissioners felt that based on the volume of public comments received, they wanted to slow down and listen to all of the public comment. Upcoming work sessions included a comprehensive field trip scheduled for July 12, 2010 with the Planning Commission to consider the effects of the current Code and proposed revisions on the escarpment, ridgeline, and visual impact corridors; a presentation from the realtor community on August 12, 2010; and future work sessions on economic considerations including staffing, property values and tourism, and to revisit the purpose, goals and objectives of the Master Plan and Section 9, and public comment. Commissioner Padgett submitted her opening comments for the record (*County Exhibit A-1*).

John Peters, representing the ad hoc committee, commended the efforts of the Board of County Commissioners, the Planning Commission and those who had been diligently attending the workshops on visual impact. Visual impact was an important aspect of the Land Use Code. He read from “Ad Hoc Visual Impact Review Committee” noting that the purpose of the Committee was to review Section 9 of the Ouray County Land Use Code and the proposed revisions, to analyze the effectiveness of the two documents and discuss the merits of each, to ultimately prepare a draft revision effectuating necessary changes to best manage visual impact concerns within the county. He began the PowerPoint presentation merging it with his report for his verbal presentation. Other members of the Committee offered input throughout the presentation.

Macfarlane discussed the process that an applicant went through to get approval and spoke to several case study examples in the PowerPoint presentation. One of the reasons that the Committee was leery about and were not recommending the expansion of the visual impact corridors was because in flatter terrain and with less defined backdrops they felt that there would be many more situations where people would have to go through extraordinary lengths and put houses where they do not want them.

Peters concluded that as shown by the examples of the case studies, the visual impact process was rigorous and often onerous to go through. The Committee believed that Sections 9.1, 9.2, 9.4, and 9.5 worked well and needed little to no change. There could be slight clarifications to Section 9.2.A. regarding remodels and/or additions. It was the opinion of the Committee that the existing Code functioned properly but that weaknesses still existed within the Code. More emphasis needed to be placed on blending with definitions clarified through graphic examples, and there needed to be a clear understanding of what skylines needed protection and how the “gap” rule was most effectively utilized.

Macfarlane noted that one reason the Committee members came to their consensus that the best way to address working with the problems they were identifying was to use the existing Code format because over the period of time that the existing Code has operated and been utilized they began to see confusing and hard to interpret parts. Their concern was that while some of the things proposed may work better, the only way to test drive that was to go through a learning period. By using the tools available and highlighting the areas that needed work and clarification, unintended consequences could be avoided while moving toward a cleaner Code that accomplished the goals that everyone was talking about. A lot of good work had been done on the draft, in particular the blending concepts. The main reason they were not focusing on a compare/contrast type style was because they felt that working with the existing Code and highlighting areas for improvement gave them a vehicle that was more predictable in how the outcomes would be on the ground.

Peters discussed deficiencies in the existing Code. The Committee felt that more emphasis needed to be placed on blending with definitions clarified through graphic examples. There also needed to be a clear understanding of what skylines needed protection and how the “gap” rule was most effectively utilized. He went through The Point System and made comments and recommendations for revision as detailed in *Committee Exhibit A-1*.

It was the opinion of the Committee that the existing Code was functioning properly and aligned with the original intent to preserve the major scenic vistas of Ouray County. They believed that the two-tier system as proposed placed additional undue burden on both property owners as applicants and the County as enforcers. Expansion of the view corridors in their opinion reached beyond the original intent of the regulation and would also place exceptional burdens on the Land Use office and possibly subject the County to unnecessary legal action. The desire for quality design, harmonious development and exceptional visual qualities throughout the county was a noble and just cause and could often be achieved through education and example. The Committee agreed that a comprehensive companion guide describing

these concepts be included with the "Before You Build in Ouray County" pamphlet provided to potential property owners and applicants.

In conclusion, the Committee felt that much of the process involved interaction between land owners, architects, builders and County officials, and that success of the regulation evolved around workability, clarity of goals, communication, and flexibility in application.

Commissioner Padgett opened the meeting to questions from the public to the presenters.

Robert Savath commented on Slide 42 regarding the point that the criteria should be whether a project actually breaks the skyline or not rather than having an arbitrary setback requirement. One of the other factors involved was if there was a high point that fell off somewhat that would screen the project from the corridor the Code was trying to protect without having to be an arbitrary distance from the escarpment. The rule about breaking skyline should be outcome based rather than having an arbitrary setback requirement.

Tom McKenney asked for more clarification on height. He understood the presenters to say that it was based on natural grade; however, it was not uncommon in the town Ridgway for a wall in one building to have, say, seven or eight feet difference in natural grade. Where in that house would the 35 feet or height start from? Kumpost responded that the natural grade was the grade before any construction began and a survey would be necessary. It would be from that grade up, unless the grade was cut as in the case of a walkout basement on that elevation and that plane, then the cut grade became the point to measure up from. It would increase if the grade was sloping up from that basement if the existing grade was higher. Once in the building, you would go with the existing grade. However, the County Code would not apply within the town of Ridgway that had its own regulations. Macfarlane explained further and discussed terracing.

Craig Fetterolf had a question on the slide of the projection of Coulter's house on CR 24. When coming down CR 24 you have this slope and the natural grade and you can go 35 feet above the natural grade. With regard to the terracing suggestion, what would happen if he was Charles Barkley and he wanted to build a basketball court beneath his house? He would need a 20-foot drop. Would he then have a 55-foot house visible? He asked if he could do that. Kumpost replied yes, as long as the highest point of the main part of the building did not exceed 35 feet above what was the existing grade. It is fine to dig down within the house. The existing grade governed within the footprint of the house even if there was a basement floor. Fetterolf asked if he could have a walkout basement. Kumpost referred to Slide 38. In that example, if Fetterolf wanted to drop down 35 feet he would not be in compliance. Kumpost explained further that he could have a basement but as soon as there was an egress at that level, there would be a grade at that level. A discussion followed. Fetterolf asked Peters to clarify the setback view lines on the escarpment on Slides 41 and 42. Peters referred to Slide 40, also, and discussed the sightlines from different viewing angles, adding that the worst-case scenario would take precedence. Macfarlane added that trees could affect the views, also.

Bud Zanett complimented the group on an excellent presentation; however, he pointed out that they did not talk about south of Ouray, the Alpine Zone area. Peters explained that the Committee specifically chose the escarpment area only because it spanned multiple issues with the Code. In terms of the south valley, the group was not recommending any change to the corridors that exist today; however, he noted that the Camp Bird Road had been raised many times to be included. The Committee was not getting into the politics of that issue, as well as on north mesa CR 1. They were standing firm that the intent was to protect those visual corridors as originally represented. They believed that education and a companion document to accompany the existing "Before You Build In Ouray County" pamphlet would go a long way to provide guidance to potential property owners prior to building.

Eric Lederer asked Peters to clarify that the Committee was recommending that these graphics be in the proposed booklet for the public. Peters replied yes. There were two levels. The Committee members believed that there needed to be graphic representations to clarify the Code put into the actual Land Use Code in the visual impact regulations. There were also graphic examples in the companion document that may be duplicates but also separate drawings or photos showing examples of protecting the visual quality, of blending, of good architecture, etc. that was encouraged and what was not encouraged.

Dave Beckhart suggested to Coulter that in the examples he gave of the house in Pleasant Valley, some of the photos were using telephoto lens, others were not, and others were close-ups. He asked Coulter to further explain to what extent the house, or at least the ridgeline, was visible to the casual observer with the naked eye from the viewing corridors. Coulter referred to Slide 8 and noted that what the inspector was looking at was the notch. When going down the road at the posted speed limit motorists do not even see the notch; the break in the skyline goes away. Because of the way the Code was written the inspector had to get out his "peep sight" to look at that one little spot. Beckhart clarified that Coulter had said that in 2001 he had spent 2.5 weeks relocating and lowering the house and changing the pitch of the roofline causing the owner to lose his preferred use of the loft area because of the head room. He asked if anyone had noticed the result of that effort since that time. Coulter replied, absolutely not, and that was why he offered to point this out. This was something that, as builders, they had to deal with often. His whole point of bringing up this particular case study was to say that the current Code was working and the regulations did not need to be dumped because a lot of work had gone into what was written down now. He asked not to reinvent the wheel.

Diana Rogers explained that she had been through this process, herself, and the information that was imparted tonight would have been helpful. It would be nice if a person looking at a lot to build on had this information before closing escrow. It could impact a way of life. Keep that in mind. The County may want to impart this information to the realtors that, as they are selling property, it may not be buildable under the rules today.

Dan Choate concurred with Rogers. He heard a lot about how visual impact affected everyone in the room. For someone who came here who had worked hard all of their lives to come up with the money to invest in a dream home, it was important to know these things. Before You Build in Ouray County should say Before You *Buy* in Ouray County. He heard horror stories all of the time. That should be considered in visual impact rather than a little dip in the skyline being an

issue and costing delays in cost and time, and the cost to the taxpayers in the county to support the structure that implemented these problems.

Peters explained that with regard to notification of a potential buyer and existing lot owner, the Land Use Code had existed and evolved over time. One thing the Committee felt strongly that would help potential buyers/builders/lot owners would be to have a map, an overlay, that clearly showed the corridors and escarpment areas affected by these regulations so that they could decide if their property was subject to the regulations or not. It could be something the realtors had in their hands, on the County website, and available at the Land Use Department.

Ted Collin had a few questions related to the presentation. On the scorecard where it talked about Size and Structure with .1 point for every 100 square feet, the Committee's comment was that it "Provides incentive for smaller homes, penalizes for larger homes. No revision." He asked why they wanted to penalize larger homes. Peters replied that they were not trying to penalize them; they were just making an observation that they could be penalized if they could not meet the point system otherwise. Collin referenced the height restriction in the new proposal and asked if a Victorian-type architecture with a basement, a first and second floor, a loft and maybe a couple of chimneys would fit under the new proposal. Peters replied that dealing strictly with height limitations it would depend on how high the Victorian was. He reminded Collin that the regulations were only within the proposed corridors, not on a countywide basis. Collin was thinking countywide because that was the new proposal. Peters corrected that height would be on a countywide basis. Kumpost asked if Collin was referring to the 20-foot Tier 1 height restriction, which was repressive and unrealistic. Collin replied that he was. Kumpost explained that the group was trying to define height for the entire county but added that if Collin was talking about the proposed expanded view corridors, the Committee had stated that they did not recommend that at all. If he was talking about the Tier 1 20-foot height, he felt that would create more problems visually because the county would end up with boxes everywhere, stubby little houses with flat low-pitched roofs. People will tend to follow the path of least resistance. To get a bigger house with a more interesting look, if applicants had to jump through more hoops and spend more money and be subject to the opinion of the Staff, they just would not do it. They would either go somewhere else to build or build a box.

Macfarlane added that on the criteria question, "penalize" might be the wrong word. The key was that the bigger and taller the house, the more potential for visual impact. The Committee felt that the criteria, the way they were listed, suggested that the applicant was getting negative points the bigger and taller it was and would then be working with the secondary criteria to mitigate the height and scale and mass issues. What the Committee members liked about the point system was that it set a baseline on how big and tall a house was and then gave flexibility to use on how far it was from the road, how well it was screened, and how well it blended, so that each owner could tailor those important criteria and prioritize them through their own expression to reach a result that helped the house to blend. The Committee felt that they may want to modify the points in the table and then test drive on existing homes to determine if those points were correctly spread to achieve the desired flexibility and outcome from the point system.

Commissioner Albritton noted that the Commissioners had sent the Committee a list of possible height definitions and asked if what they described tonight fell in line with any of those possible recommendations specifically, or would what they described tonight require a separate definition.

Gardner replied that the height definitions the Commissioners provided were relatively vague and highly subjective. Something more graphic would follow a better course.

Commissioner Albritton noted that the Committee had touched on a couple of things for review and possible changes. If they were willing to continue, she would like to see their additional thoughts on blending, massing and rooflines. She wondered to what extent the gap rule was necessary and if they were looking at the gap rule today would they craft it differently.

Macfarlane shared an example of a house that skylined against a valley backdrop and whether that constituted the type of skyline break that the Code was intended to prevent. A small notch that happened to be greater than 10 feet may also represent an area where the Committee could work on finding examples of places where a lot of work was done for very little gain and use this opportunity to clean up things that are not really forwarding the effort in terms of the skyline rule, for example, and use graphics to illustrate that more clearly. He discussed how to analyze the screening. The current interpretation of percent screening was an aggregate average across the entire viewing window. The group thought there should be some way to specify how much at any viewing point in width is visible of a house or how many pieces a house was broken up into, or some way of quantifying it so that it would be easier to relate it to some graphics than come up with the percentage that seemed to result in unintended consequences.

Peters discussed Coulter's example of a notch. That demonstrated that the Code was working but a square peg could not be fit into a round hole and, as written, could not be interpreted literally because of anomalies. He noted that Paul Christensen, Ouray County Building Official, had really tried to work with those individuals stuck in the anomalies to get to a point to say that with an existing lot no matter what was done would be a struggle so they should try to come up with some compromise to allow a person to build a home on the site. In answer to Commissioner Albritton's question, he felt that the Committee would be more than willing to continue to work on this.

Commissioner Padgett asked if there was a way to put into words the concept in the Committee's building height definition graphic and if the graphic was close to what was captioned as Alternative B.

Kumpost explained that since the slide was created he had one where he clarified that within the building footprint it was the existing natural grade that governed, not a basement floor or anything like that. He added that this was a starting point and open for debate.

Commissioner Padgett noted that the building height discussion went with the County moving forward with adoption of the 2006 IRC that the Commissioners were considering adopting at the end of this building season. She asked if the

Committee would work with the County to customize it further to the degree necessary to be able to adopt it in the fall. She wanted to make sure that the IRC did not conflict with the Code with regard to a building height definition.

Macfarlane replied that the suggestion would be a standalone apart from Section 9.

Peters explained that, as builders, they felt it was important to understand the Code because it made their jobs easier. The group would be more than willing to help and serve in any way they can. The rigidity of Code today caused hardships on that one lot. Flexibility was often good but could lead to exploitation. Cleaning up and testing prior to making changes was good.

To a question by Commissioner Padgett, Peters agreed that it was essential that the appeals process be in the Code. Macfarlane added that the County was on the right track to clarify that beyond the standard hardship identified in the variance where it was simply topographic or other hard constraints, the appeal process would give relief to people who tried to show that they were attempting to meet the intent of the Code but for the uniqueness of a lot, etc. were having problems.

Commissioner Padgett discussed the Committee's recommendation for bonding to ensure continued compliance for screening and asked what that would look like for an individual residence.

Peters explained that it was a tough area but the reason why they put it in was specifically for people relying on screening as a point gainer. The idea of bonding was not going out and having a huge burden to get the bond but to have some financial stake on the insurability that those trees would survive. There was usually a 1 to 2-year period to know if the tree would survive. That would not prevent someone, however, from tearing out the screening once the bond was retired. There was language in the Code that continual compliance was required. It would then become a Code enforcement issue.

Karen Risch had a question regarding the south end of the county and someone else's question as to why there were no examples from there. It occurred to her that perhaps it was because there was not a lot of building along the Hwy. 550 corridor south of Ouray. She asked the group to speak to problems meeting the Code south of Ouray on that Hwy. 550 corridor. She asked what experience the members of the panel had building on Hwy. 550 going south on Red Mountain Pass.

Gardner built one place there that was within 1.5 miles of Hwy. 550 but it could not be seen.

Commissioner Meinert thanked the Committee for the extensive work that they put into the presentation and the fact that they agreed to continue to be a resource for the Commissioners. Regarding the issue of skyline breakage, the Commissioners recognized that it was difficult on lots like Coulter's that were not on the escarpment or a ridgeline, it was off of the escarpment. They were thinking of abandoning the skyline breakage on anything other than prominent ridgelines and escarpments. The presentation talked about the difficulty on the skyline breakage issue off of the ridgelines and escarpments. He asked if the Committee favored having no skyline breakage regulation except on ridgelines and escarpments.

Macfarlane replied that the group talked about identifying as primary those key ridges from the highway corridors but then there may be a few places where if the ridge was prominent enough and created another effective skyline that should be looked at. It was a discussion to continue to try to define, even though work was involved up front, trying to find some way to map those out so that people know in advance of purchasing all the way through approval which are the critical ridges and escarpments. That would then help to clarify the definition in all regards because now "ridge" has a definition that is not always applicable. It was unclear whether ridge was where the slope breaks or the escarpment to measure to.

Commissioner Meinert noted that one reason why the Commissioners were struggling with the issue was the notion that the configuration of some lots may make them unbuildable and that was certainly not the intention.

Commissioner Padgett noted that from the presentation it appeared that the group was still okay with the original Section 9 definition of Purpose. Peters replied yes.

Jeff Scott, Planning Commissioner and "new guy on the block", explained that he did not even know that Log Hill existed so the existing Code was doing something right because he did not know there were houses up there. In many jurisdictions visual impacts are not even addressed in the zoning code. What he has seen in many cases was something like the companion document. It was a very good suggestion by the group and would be a great document to have in place for everyone. The setbacks are so rigid and when dealing with visual impact it is a very contextually, sensitive element. Variable setbacks, depending on where the individual lot is and where the viewshed impact is, are a really good idea. Graphics say a lot and he felt that there was a need for more graphics for better understanding. The maps highlighting the corridors, the ridges and the escarpments that apply are integral to the process.

Commissioner Padgett opened the meeting to general public comment.

An unidentified speaker claimed that it was interesting to note that in the last 24 years the existing Code had not had one addition or amendment. Some facts were brought up that probably needed revision. The Commissioners were on the right track to go back to the original Code and make revisions and amendments to make it work.

Howard Greene felt that the meeting was fantastic. He thanked the Commissioners for being willing to step back and take another look after hearing from the public. He thanked the ad hoc committee adding that it was amazing how much work they had done and how clear their thinking was. It was a perfect example of good democracy and how things should work.

Al Lowande was relatively new to the area. One reason he moved here was for the incredible views and he was impressed by the fact that there was a county government that cared about visual impact and was relatively progressive. He asked Peters why he was against expansion from the existing corridors to other county roads. Larry Kumpost pointed out, after seeing how complex the visual impact was now, how much more complicated it would be if all of the roads in the county were included. He also pointed out potential litigation when people would be told that they cannot build to a certain height that they could when they bought the property.

Peters noted one other consideration. If the County started requiring almost every application to go through a separate process it would be difficult to administer in terms of timeliness and process. It would be an excessive burden for the County requiring more staff and review process, compounding the burden of getting a permit. A lot of that could be effectuated through a companion document.

Craig Jackman asked how the visual impact regulations would work if applied to the urban areas of Ridgway, Ouray and Colona.

Peters pointed out that one of the desirable characteristics of this region was that it was not a "megatropolis" where one city merged into another city and another without a break in between. Trying to impose those regulations on the towns would be a difficult process. Population should be directed to the towns and regulations in the towns should be administered by them.

Randy Parker moved here relatively recently because of the incredible beauty here. He was concerned from meetings that he had attended that the regulation did not address one issue at all. The County contracted with the Theobald Study and the RPI Study to talk about the tremendous impact the build-out in Telluride would have on Ouray County. The County has done a good job of managing visual impact because most of the building has been in the corridor that the County was regulating. The Telluride Study says that in a relatively short period of time the pent-up demand from Telluride would be coming this way. He thought that the citizens deluded themselves that if they polish this visual impact regulation and leave it on the limited travel corridors where it is now, the whole county was protected. There is a huge portion of the county left unprotected. He did not know if it was a good idea to expand to all county roads, all Forest Service roads, but what he did know was that if the County does not regulate the visual impact in these other areas it would not get the same kind of protection that it has on Hwy. 550 and Hwy. 62. He appreciated the technical things that were raised but felt that they had turned a blind eye by not addressing the question of the huge mass of this county that is not regulated by visual impact regulations. No one wants to go to a design review for the entire county. We need to think outside of the box and figure out how to regulate those huge areas that are not regulated now. To think that we can educate people to do blending is naïve.

Peters explained that the existing corridors did not lie strictly on Hwy. 550 and Hwy. 62. It was important to recognize that the County had zoning that has protected the valley floor in terms of its potential development. He discussed zoning in various areas of the county. There was a layer of protection in many areas outside of the valley zones when future development comes in. There were very few areas left that were capable of being developed, mostly directed to the north Log Hill area. The zoning was a protection in itself. Between topographic constraints and the existing land use regulations he felt that the County was afforded quite a bit of protection.

9:10 Commissioner Padgett closed the meeting.

*[*All exhibits are maintained in the County Administrator's Office.]*

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS
OURAY, COLORADO

ATTEST:

Lynn M. Padgett, Chair

K. Keith Meinert, Vice-Chair

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

Heidi M. Albritton, Commission Member