

The Board of County Commissioners met in regular session on August 9, 2010. Those present for the session were Lynn M. Padgett, Chair; K. Keith Meinert, Vice-Chair; Heidi M. Albritton, 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. 9:11 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.

Tavitac Appeal

The County Attorney advised the Commissioners that she had received a Notice of Withdrawal for Tavitac’s appeal to the Board of Assessment Appeals on real property. Commissioner Albritton suggested sending a press release to the newspaper, since there was no press at the meeting, and advising the school districts.

B. 9:19 General Business:

1. Request for approval of warrants:

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve warrants as presented. Discussion. Commissioner Meinert had a question on several warrants and it was decided to pull the three warrants in question until further information could be obtained later today. Commissioner Albritton amended the motion to approve all but the three H1N1-related warrants. Commissioner Padgett clarified the H1N1-related warrants on page 9 of the warrants payment report. Commissioner Meinert seconded the amended motion. With no further discussion, the motion passed unanimously.

2. Request for approval of July 26 and August 2, 2010 minutes and ~~July 28, 2010 Board of Equalization minutes:~~

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve the July 26, 2010 and August 2, 2010 minutes as presented. Discussion. Commissioner Padgett had corrections to the July 26 minutes. Commissioner Albritton amended the motion to include the corrections. Commissioner Meinert seconded the amended motion. With no further discussion, the motion passed unanimously.

The July 26, 2010 minutes were brought back later in the day for final approval.

3. Review and acceptance of Ouray County Public Trustee Report for July 2010:

M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to accept the Public Trustee Report for July 2010 as presented. Discussion. Treasurer and Public Trustee Casolari noted that there was a correction to the report that would be reflected in the August Public Trustee Report. She asked if the Commissioners wanted her to be present at the meetings every month or every three months. The Commissioners agreed to have her attend quarterly. With no further discussion, the motion passed unanimously.

4. Discussion and appointment of Colorado Counties, Inc. (CCI) Legislative Committee Member:

M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to appoint Commissioner Padgett as Ouray County’s representative to the CCI Legislative Committee. There was no discussion. Motion passed unanimously.

5. Request for approval and authorization of the Chair’s signature on a Fire Management Services Contract with Anchor Point Group, LLC:

Commissioner Meinert asked and the other Commissioners agreed to discuss this during the emergency management discussions later in the morning.

9:42 The Commissioners took a break and reconvened at 9:51:

B. 9:51 General Business, *continued*:

6. Request for consideration and possible adoption of Resolution 2010-026 opposing Amendment 60 regarding local property tax revenue:

Michelle Nauer, County Clerk and Recorder, and Chief Deputy Clerk, Vicki Lane, were present.

There was some discussion about the Blue Book drafts and whether or not the Commissioners should make comments. Nauer advised that the Commissioners would have to submit comments individually because she had to verify voter registration.

M/S/P—*Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to adopt Resolution 2006-026 as presented. Discussion. Commissioners Meinert and Padgett had several suggested changes to the resolution and it was decided to make the changes and bring the resolution back for adoption once the changes were made. As a result, Commissioner Albritton withdrew the motion.*

7. Request for consideration and possible adoption of Resolution 2010-027 opposing Amendment 61 regarding public borrowing:

Commissioners Meinert and Padgett had suggested changes to the resolution and it was decided to table any action on the resolution until the changes could be made and the resolution brought back to the Board.

8. Request for consideration and possible adoption of Resolution 2010-028 opposing Proposition 101 regarding motor vehicle fees, specific ownership taxes and other fees and charges:

Commissioners Meinert and Padgett had suggested changes to the resolution and it was decided to table any action on the resolution until the changes could be made and the resolution brought back to the Board.

D. 10:31 I.T. Manager:

1. Discussion/direction on FastTrack options:

Michael Elden, I.T. Manager, was present to discuss a proposed change to the County's telephone and IT services provider. He presented a report dated August 9, 2010 titled "Recommendation for migration of Ouray County Telecom and Internet systems from Qwest to FastTrack" and discussed the reasons for his recommendation. A discussion followed.

11:04 The Commissioners took a break and reconvened at 11:15:

E. 11:15 Emergency response discussions:

1. Discussions with representatives from Mountain Rescue regarding the need for a new vehicle:

Matt Hepp, Captain of the Mountain Rescue Team, Tim Eihausen, Chairman of the Vehicle Committee, and long-time Rescue Team member Sam Rushing were present to discuss their need for a vehicle for backcountry response and to brainstorm with the Commissioners on funding sources. They discussed the types of vehicles they were considering. A discussion followed.

The Commissioners suggested that they speak to Norm Rooker who had contacts with various organizations that could have vehicles, and Kim Mitchell, Chief Paramedic with Ouray County. Alan Staehle, Emergency Management Coordinator, was present and offered to work with the group to research funding opportunities.

2. Fire planning discussions:

Because of time constraints the Commissioners agreed to reschedule this discussion for a future meeting.

11:31 General Business, continued:

5. Request for approval and authorization of the Chair's signature on a Fire Management Services Contract with Anchor Point Group, LLC:

Alan Staehle, Emergency Management Coordinator, explained the request and provided some background information. A discussion followed as to who was responsible for payment and how billing would be done. San Miguel County was the fiscal agent for six counties in the region and the bill would be submitted to them. The Commissioners agreed that they wanted something in writing from San Miguel County acknowledging that San Miguel County would be paying the bills to be brought back to the Board in two weeks. Staehle indicated a need to have the contract signed sooner.

M/S/P—*Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to approve and authorize the Chair's signature on a Fire Management Services Contract with Anchor Point Group, LLC after satisfactory paperwork from San Miguel County that outlined the parties' responsibilities and billing arrangements, and subject to addition of a non appropriations clause in the contract. There was no discussion. Motion passed unanimously.*

F. 11:44 Public Hearing – Board of Zoning Adjustment:

Applicant: Stephen M. Budai

Location: Lot 3, Ridgview Estates, 13521 County Road 1, Ridgway, Colorado

Purpose: Review and consideration of an appeal by Stephen M. Budai, of an administrative decision regarding an application for a building permit

Virginia Bellows and Stephen Budai were present. Mark Castrodale, County Planner, and Bryan Sampson, Planning Technician, were present.

Commissioner Padgett convened as the Board of Zoning Adjustment, opened the public hearing, and explained the purpose for the hearing. *[A packet of information provided for the Commissioners to review prior to the hearing was entered into evidence as County Exhibit F-1. The packet included a Notice of Public Hearing; a Staff Memo dated August 9, 2010 from Bryan Sampson; a letter dated July 29, 2010 from Paul Christensen, Ouray County Building Official, to Stephen Budai; a letter dated July 30, 2010 from Mike Budai and Virginia Bellows to the Land Use Administrator; a Staff Report dated October 3, 2000 from Paul Christensen, Ouray County Building Official, to the Board of Visual Appeals; and a copy of the October 23, 2000 Minutes from the Board of Visual Appeals. A Proof of Publication was entered as County Exhibit F-2.]*

Virginia Bellows, wife of Stephen M. (Michael) Budai, explained that she and Stephen Budai had appealed to the Board of Zoning Adjustment to request them to uphold a variance granted to Bellows and Budai (the Budais) ten years ago for their house at 13521 County Road 1 in Ridgway. In lieu of that, she requested that the Commissioners approve a new variance to allow them to obtain a building permit. Stripping them of their variance would cause a tremendous financial hardship for them. In January and May, Budai spoke to Paul Christensen, Ouray County Building Official, about the rebuilding of the house and both times was assured that there would be no problem in doing so. In July, when their General Contractor (GC), Phil Bailey, called Christensen to advise him that the Applicants would be submitting their building permit package, Christensen told Bailey that he would be required to put up story poles because Christensen thought there might be a view problem. The story poles were erected and the only view issue was the area from which the Budais were granted a variance when the house was originally built and for which they paid \$25,000 in mitigation work. They believed that they did not have a problem since they had already met the intent and purpose of the Code with their variance but then they were told that the variance was no longer valid because more than 50% of the house was destroyed. However, the entire foundation of the house remained including the basement. Since the Applicants had checked with Christensen in January, they had no hesitation in ordering a replacement timber frame package as soon as they received the funds from the insurance company in March. The frame was due to be delivered around September 1. It was coming from Maine along with a five-man crew. Before the frame could be raised the contractor needed to perform repair work in the basement and on the first floor around the area of the chimney where the main brunt of the fire was and that would take about three to four weeks to perform. The reason why they needed the variance today was because the GC's crew needed to start the work this week in order to meet the timeline. Unfortunately, the next meeting of the Board of County Commissioners during which any recommendations of the visual impact board could be approved was not until September 13. Financially, they could not afford to have a timber frame crew from Maine sitting around for weeks not doing any work. They were on the crew's work schedule from September through October 15. It was critical to have the roof on before the winter season so that all interior work could be completed by March. After that time, no additional funds would be released by the insurance company and they would have to complete the house using their own funds. As they were both retired and living on their pensions and savings this would cause a severe and totally unnecessary hardship for them. They believed that the variance could be granted without substantial detriment to the public good. The violation was minor. To see the violation while driving a person would have to stop the vehicle, get out in the middle of the road, and know exactly where to look. Even then, chances were good that it would be missed the first time. If a person did not stop, the violation would be missed while the vehicle negotiated a curve in the opposite direction. As for bikers, they would not see the violation because they would have their heads down and would be pumping hard to get up the steep hill. There were very few, if any, pedestrians because the road was steep and dangerous with no berms or sidewalks. It was significant to note that there had never been a formal or informal complaint presented to the Land Use Office about their view violation in the ten years they lived in the house. Bellows indicated the audience and said that they were all in agreement with the assessment that the variance would not result in a substantial detriment to the public good. In addition, their neighbors as evidenced by their homeowners association's letter in the building permit package delivered to Christensen, wanted the County to allow them to rebuild their home. Bellows explained that the point of violation was the same that it was ten years ago when the Commissioners granted a variance. The Code had not changed since the variance was first granted so they had no reason to believe that it would not be granted again. In 2000, the Board specified \$25,000 worth of new mitigation that was still in place and had not been impacted by the fire. They were proposing to rebuild their home on the same foundation, at the same height, using the same variance. They believed that they had in the past and would continue to meet the spirit of the Code and the original intent and purpose of the variance. In conclusion, they requested that the County grant a variance and direct approval of the building permit so that they could continue, on schedule and without undue financial hardship, the rebuilding of their home that they lost on Christmas Day, 2009.

Commissioner Padgett asked if the rebuild was the same profile.

Bellows explained that the only difference was that on the far end, the opposite end of the visual impact area, they were bumping the house out two feet into the driveway but the addition was backed by mountains and a thirty-foot tall Ponderosa pine.

Castrodale distributed photos and a drawing (*County Exhibit F-3*).

Sampson explained that Budai had a home previously on the property that had been destroyed by fire in 2009. The original home did require a variance for construction. Budai now asked to build a very similar home on the existing foundation and submitted an application for a building permit to the Land Use Office on July 27, 2010. It was then discovered that the proposed structure would be in violation of Section 9.3.C. of the Land Use Code due to a break in the skyline. It was Staff's determination that any prior variance would not apply to any future construction and, thus, informed Budai that the building permit would not be processed. After researching the previous variance, it appeared that the Board of Visual Appeals had a public hearing in 2000 but no documentation was found sending a recommendation for a variance to the Board of County Commissioners. Staff could only speculate as to how the matter was taken care of in 2000 and Staff questioned the validity of the original variance. Budai was now formally appealing

Staff's decision to deny the issuance of a building permit. He explained that there were two sets of photos. The first set showed a Photoshop version of a mock building to indicate the mass that was being contemplated. The other photos showed story poles as they stood, with one showing hash lines to indicate the roof line.

Commissioners Padgett and Meinert had questions of Staff.

Commissioner Albritton pointed out that a building permit had been issued by the same building official who had attended the Board of Visual Appeals hearing in 2000. According to the minutes of that hearing, the Applicants made a presentation, the building official was present, there was a unanimous decision to approve, and the house was built. She had to rely on that as evidence that a variance had been issued and granted by the Board of County Commissioners as evidenced by the fact that the Applicants had a building permit and a home had been built.

Deganhart advised that the issue today was whether or not the building official had made a proper decision in denying the request. There was a pending appeal to the Board of Visual Appeals on the visual impact piece. The decision today was simply if the Commissioners believed that there was a variance and that it still stood, they could direct the building official to issue a building permit.

Commissioner Albritton replied that the only thing that would sway her that the variance was not still in effect would be if there had been significant changes to the building or landscape to wipe out the visual impact topography to the house.

A discussion followed.

Commissioner Meinert pointed out that if a structure was completely destroyed, under Section 4 of the Code, that structure had to comply with the Code in effect today. Regardless of whether there was a proper variance in 2000, once the house was more than 50% destroyed and had to be rebuilt it had to comply with the Code today and get a new variance unless a variance could be issued under direction by the Board of Zoning Adjustment under hardship provisions. He wanted the appeal to be reviewed under Section 19.7.D.3. of the Code, not Section 19.7.D.1. There was discussion as to whether proper notice had been made to allow review as such. Deganhart pointed out that case law would suggest that it would be ineffective to allow the Board to render a variance today because it could be considered as misleading to the public on reading of the notice. Commissioner Meinert maintained that the Commissioners had the powers under Board of Zoning Adjustment in the Land Use Code to grant a variance to enable the project to proceed and to direct the building official to issue a building permit while still preserving the integrity of the Land Use Code against any challenges. Each individual case would have to be viewed on its own merits and the Board at that time could take into consideration situations that existed on that particular case. He was comfortable that this course of action would not undermine the Code or set a negative precedent.

At this time, Commissioner Padgett opened the hearing to public comment.

Don Paulson, Ouray County resident for 10 years, noted that he was in favor of visual impact but on a moral sense he could not believe that someone could have a house for ten years, have it burn down, and be told that they could not rebuild it.

Dr. David Shalinsky, a resident of San Diego, explained that he had something in common with the Budais. He lost his home in the Cedar Fire of 2003. He had something in common with the Board. He was the Chair of the Architectural Committee responsible for overseeing the rebuilding of 165 homes that had burned in his neighborhood. The Budais only had one interest, and that was getting home. Under such circumstances it behooved the public officials to do everything they could to get them home. He worked closely with the building department at the City of San Diego and he understood the issues that they dealt with and he understood the codes that were subject to quite different interpretations. It seemed to him that from the building department's perspective they could not make a good decision because of the lack of records. From the point-of-view of what was the right thing to do, he would say that there was indeed a variance there and how the Board dealt with it, whether a new or the old one, there was an acceptable property there. When his neighborhood was rebuilt, if someone had a home they were allowed to rebuild automatically. He suggested that the Commissioners had a strong case in this situation to support the application and, as a community, they had the responsibility to be with the Budais in that long marathon of rebuilding. To the building department he commented that despite the fact that they had to interpret the Code strictly they certainly would not want the Budais to go through every step of the process because of the financial consequences. The building department should bend over backwards to work with the Budais to rebuild the same home and not have to come back again.

Steve Currey echoed Shalinsky's comments adding that everyone was here to get these folks back home. One technical point: if 50% of the building needed to be redone, how did a fire know when to go over 50%? If that was stated in the Code, it needed to be seriously looked at.

Fred Jossi lived on Log Hill and had lived in Ouray County for fourteen years. The only time he noticed the Budai house was when it was being built. He had not noticed it for the last 10 years. He had not noticed it missing. It was well hidden. They needed to get back on the project to beat the weather.

Bob Luttrell explained that he did not know that the Budais lived there until this morning when he saw the story poles. He had seen fires that had destroyed foundations and he would like to know how the building official determined that the existing foundation was a good enough structural foundation since the fire. He asked how the building official verified that it was satisfactory.

Mike Budai replied that the fire was a chimney fire and burned up, out the roof. The timber frame was still standing, was structurally sound, but they had to take the whole thing down. The foundation did not receive any damage except for the first floor, itself, where the chimney fell through.

Richard Love and his wife, Lois, were residents of Ridgview Estates for 5 years. They also, unfortunately, lived in California where they were trying to build a house within a quarter mile of an existing house and it has taken them eight years to get the permits. He hoped that the situation here was different.

Lois Love noted that there were a lot of people from their neighborhood that felt bad that the Budais' house was destroyed and hoped that there was some sense here to let them rebuild the house that they had, that they lived in for ten years. She asked for a show of hands of those who were present for the Budais.

Penny Devin was concerned when listening to Bellows's testimony that the administrative staff did not say, "By the bye, are you aware that there are new rules?" Were they not given any heads up that this could happen back in January?

Pam Larson was getting a sense of the emotional sense that everyone was here to support this situation. She had two things from her point-of-view: 1) the discussion on the fact that the variance had to have existed or there would not have been a building permit was valid, and 2) she encouraged the Commissioners as the Board of Zoning Adjustment to look at their powers and ability to make a decision.

Tom Hillhouse seconded what everyone else had said. The Commissioners had done a good job of analyzing the situation. He felt that the original variance did, in fact, exist or else the house would not have been built. That was certainly not the Applicants' issue that things were not handled properly. He encouraged the Commissioners to promptly convene as the Board of Zoning Appeals, or whatever the appropriate terminology was, and issue a new variance in order to address the 50% issue. Certainly the issues today were no different than they were ten years ago with the exception that the Budais had spent some money to alleviate the visual impact that, apparently, existed at that time and has not changed. It deserved prompt action because time was of the essence. It was an unusual situation where contracts had been issued and insurance was in play. They do not need any more frustration than what they have already encountered.

Commissioner Padgett closed the public comment portion of the public hearing.

Commissioner Padgett asked what the original color of the structure was. Bellows replied that it was taupe, a tan color that matched the mesa behind the house. Commissioner Padgett asked if the color would be identical, to which Bellows replied yes and that the roof was green/gray and would be the same.

Budai referred to the Photoshopped photos presented by County Staff and explained that from the centerline of County Road 1 it was not a true representation. The photos were zoomed in on.

Commissioner Padgett summarized that the Board was in agreement that the original structure was not a visual plight and that it did have a valid variance at the time of construction. The Board would like to see the Budais build a similar structure and remain in the neighborhood. The next step was to look at the existing powers in the Land Use Code to make a decision with the right outcome to reduce the potential for unintended consequences. A discussion followed.

Commissioner Meinert believed that the application for a variance to the Board of Zoning Adjustment was not to ask the Board to disagree with Staff's decision but to overturn it on other grounds. The grounds under which a variance could be issued in Section 19.7.D.3. of the Land Use Code had been demonstrated by the fact that the Applicants had lost their home in a fire and that time was of the essence in coming to a decision.

M/S/P—*Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to overturn Staff's decision to deny Budai's building permit and in doing so finding that there was no Staff error but they were reversing the determination by the Building Official; to issue a variance under the authority of Section 19.7.D.3 of the Land Use Code by finding that the Budais had a "peculiar and exceptional practical difficulty" that existed due to reasons of loss of home through a fire, the need to rebuild immediately due to insurance company specifications, and because the home would utilize, essentially, the same footprint and the same construction materials and colors and exterior as the prior home; that a valid variance had existed for ten years; and because all of the mitigation criteria that was put in place as specified by the valid variance remained in effect today. Discussion.*

Deganhart added a condition as required by the Land Use Code that the variance would expire in one year if not used. She would draft a resolution to bring back to the Board.

A roll call vote was taken on the motion with the following results.

*Commissioner Padgett voted in the affirmative
Commissioner Meinert voted in the affirmative
Commissioner Albritton voted in the affirmative*

Motion passed unanimously.

Commissioner Padgett closed the public hearing.

12:59 The Board of Zoning Adjustment reconvened as the Board of County Commissioners, recessed for lunch and reconvened at 1:39:

Commissioner Padgett revisited the Commissioners' decision to table action on Resolutions 2010-026, 2010-027 and 2010-028. After some discussion the Commissioners agreed to table action on the resolutions until 6 p.m. on August 12, 2010.

Hunt provided additional information that she had received on the three warrants that the Commissioners had not approved during the morning session. Because there was still some discomfort on the part of the Commissioners, Hunt suggested not approving the warrants at the present time but rescheduling them to August 23, 2010 when Cheryl Roberts, Public Health Director, could be present to which the Board agreed.

G. 1:50 Public Hearing – Cow Camp Preliminary Development Plan:

Applicants: Donald and Katherine Kellogg

Authorize Agent: John Peters & Associates

Location: The subject parcel is located at SE ¼ NW ¼, Section 29, Township 46N, Range 8W, N.M.P.M., or more commonly referred to as Lot 2 of the Kirby Exemption located off of Ponderosa Drive, approximately 3.5 miles east/northeast from the intersection of County Road 1 and Ponderosa Drive.

Purpose: To entertain public comment on an application for Preliminary Development Plan approval of a 3-lot regular Planned Unit Development known as the Cow Camp PUD.

John Peters was present on behalf of the Applicants. Mark Castrodale, County Planner, and Bryan Sampson, Planning Technician, were present.

Commissioner Padgett opened the public hearing and explained the request. She noted that the Commissioners had received a packet of information prior to the hearing that included a Public Hearing Notice; a Staff Report from Mark Castrodale, County Planner, dated June 24, 2010; an email dated July 9, 2010 from Castrodale to John E. Peters; and an email dated July 20, 2010 from Castrodale to John Peters, that was entered into the record as *County Exhibit G-1. [Proof of Publication was entered as County Exhibit G-2.]*

John Peters explained that he was asked to get documents to Castrodale by a certain date but his computer crashed in July and then he was on vacation for two weeks. He was not able to get them in, in time so he was asking for a continuance.

Commissioner Padgett noted that the Staff recommended continuing the hearing to September 27, 2010 at 10 a.m.

M/S/P—*Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to continue the public hearing on the Cow Camp Planned Unit Development, Applicants Donald and Katherine Kellogg, Authorized Agent John Peters, until September 27, 2010 at 10 a.m. in the Ouray County 4-H Event Center subject to all documents being submitted to Staff by September 15, 2010. There was no discussion. Motion passed unanimously.*

The public hearing was continued to September 27, 2010.

Building Codes

Castrodale recalled that the Commissioners had a hearing in June to adopt the building codes that was tabled to allow Staff time to look at some issues, which they did. He asked to reschedule the hearing. A public hearing to consider adoption of building codes was scheduled on October 25, 2010 at 1:30 p.m. The Commissioners asked that the ad hoc committee be informed of the hearing.

Wildlife Shelters

Castrodale distributed a memo on wildlife shelters to the Commissioners. He summarized the key issues that had been addressed in public hearings and noted that he had modified the applicable Code sections. Because there were no new applications pending before the Planning Commission he thought this was a good time to send the modifications of the Code for Planning Commission review and asked the Board's approval to send it to them.

Commissioner Padgett noted that Agenda Item J was a discussion of Land Use Code priorities and suggested a discussion of it now.

J. 2:02 Revisit Resolution 2010-007 regarding Land Use Code priorities:

The Commissioners reviewed Resolution 2010-007 setting priorities for Land Use Code revisions and discussed modifications to include the wildlife shelter as the first priority. Commissioner Albritton suggested giving the Planning Commission a copy of the Board of County Commissioners' minutes on the issue. Commissioner Padgett suggested meeting with the Planning Commission to turn it over to them on August 19, 2010 at 4:30 p.m.

By consensus, the Commissioners agreed to have Staff draft a resolution to send this to the Planning Commission.

Because timing was an issue, the Commissioners decided to continue this agenda item to August 12, 2010 at 5:30 p.m. for amending this resolution and drafting a new resolution to send the wildlife shelter Code modifications to Planning Commission. A discussion followed on deletions, additions and modifications to the priority list. The resolution would be amended and brought back to the Board for adoption.

C. 2:28 Executive Session to receive Legal Advice from the County Attorney pursuant to C.R.S. 24-6-402(4)(b):

M/S/P—Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to enter into an executive session pursuant to C.R.S. §24-6-402(4)(b) for a conference with the County Attorney for the purpose of receiving legal advice and C.R.S. §24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiations relating to a matter pertaining to a former employee.

A roll call vote was taken on the motion with the following results.

Commissioner Padgett voted in the affirmative
Commissioner Meinert voted in the affirmative
Commissioner Albritton voted in the affirmative

Motion passed unanimously.

As County Attorney, it is my opinion that the discussion of the matter announced in the motion to go into executive session constitutes a privileged attorney-client communication.

Mary Deganhart, County Attorney

Lynn M. Padgett, Chair

C. 2:29 The Commissioners recessed and reconvened into executive session:

3:26 The Commissioners came out of executive session:

The Commissioners came out of executive session and Commissioner Padgett made the following comment.

The Board has just concluded an executive session relative to a former employee.

H. 3:27 Public Hearing – Proposed Amendment to Section 23 – Road Standards of the Ouray County Land Use Code:

Applicant: Ouray County

Purpose: Review of a request by Ouray County to amend Section 23.1.B.(1), Section 23.1.B.(2), and Section 23.1.B.(3) of the Ouray County Land Use Code. The request is made under the provisions of Section 20.2.B. that allows the County, private citizens or public entities to request changes to the Code.

Mark Castrodale, County Planner, and Bryan Sampson, Planning Technician, were present.

Commissioner Padgett opened the public hearing on a request by Ouray County to amend Section 23.1.B.(1), Section 23.1.B.(2), and Section 23.1.B.(3) of the Ouray County Land Use Code. [A packet of information provided for the Commissioners to review prior to the hearing was entered into evidence as County Exhibit H-1. The packet included a Public Hearing Notice; a Memo dated June 23, 2010 from Mark Castrodale; an annotated copy of Section 23.1 identified as changes from County Engineer; a copy of the Planning Commission Minutes from April 20, 2010; a Planning Commission Resolution regarding Proposed Amendment(s) to Section 23 of the Ouray County Land Use Code approved on June 15, 2010; a copy of Section 23.1 identified as *CURRENT; a copy of Section 23.1 identified as *Frowny Suggestions; a copy of Board of County Commissioners Resolution 2010-002; a copy of Section 23.1 identified as BOCC Draft; and a copy of Section 23.1 identified as February 5, 2010, Changes from 2-2-10 Planning Commission Work Session. A Proof of Publication was entered as County Exhibit H-2.]

Castrodale distributed a copy of Section 23.1 of the Ouray County Land Use Code explaining that he wanted to ensure that the Commissioners had the copy of what was sent to Planning Commission with just Planning Commission changes (County Exhibit H-3). He discussed that the Commissioners' packets included a history of the process adding that the draft had gone from the Board to the Planning Commission and back with a resolution from the Planning Commission.

Commissioner Meinert clarified that the reason why the Commissioners had initially launched this change to Section 23 was not to make the standards stricter in any way; it was an enabling change to allow the County to do things on the roads that the current Section 23 did not allow the County to do.

A discussion followed regarding what suggested language to add to the section.

Commissioner Padgett opened the hearing for public comment. With no comment, she closed the public comment portion of the public hearing.

M/S/P—Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to approve changes to Section 23.1 accepting the recommendations of the Planning Commission in the first and third paragraph, and adding a sentence suggested by the County Engineer to wit, "Such upgrades need not bring the section of road to full compliance with the standards set herein" as the last sentence of paragraph 3. There was no discussion. A roll call vote was taken on the motion with the following results.

Commissioner Padgett voted in the affirmative
Commissioner Meinert voted in the affirmative
Commissioner Albritton voted in the affirmative

Motion passed unanimously.

Commissioner Padgett closed the public hearing.

I. 3:42 Public Hearing – Amendment to Land Use Fee Schedule:

Applicant: Ouray County

Request: Review of a request to amend the Land Use Fee Schedule to include a fee for an application for rezoning as detailed in Section 20 of the Ouray County Land Use Code.

Mark Castrodale, County Planner, and Bryan Sampson, Planning Technician, were present.

Commissioner Padgett opened the public hearing on a request by Ouray County to amend the Land Use Fee Schedule to include a fee for application for rezoning as detailed in Section 20 of the Ouray County Land Use Code, and to consider a fee for an amended special use permit, as well. There was some discussion of the fact that the request for the amended special use permit had not been specified in the public hearing notice.

[A packet of information provided for the Commissioners to review prior to the hearing was entered into evidence as County Exhibit I-1. The packet included a Notice of Public Hearing and a Staff Memo dated July 20, 2010 from County Planner. A Proof of Publication was entered as County Exhibit I-2.]

Commissioner Padgett noted that the request was to consider a recommended fee of \$1,000 for an application for rezoning and \$500 to amend an existing special use permit.

Castrodale explained that he had received some informal interest in an application for rezoning. The Code did not specifically address an amendment to a special use permit but Land Use had done it, historically, and he has had interest in amending a special use permit.

Commissioner Meinert discussed how fees were set and asked if Staff believed that these fees, from the standpoint of an applicant, were reasonable and would not unduly burden any applicant or prevent applicants from making good faith applications. Castrodale agreed with the statement adding that he had discussed the proposed fees with prospective applicants who felt that they were reasonable.

Commissioner Padgett opened the public comment portion of the public hearing. With no public comment, she closed the public comment portion of the public hearing and entertained the following motion.

M/S/P—*Motion was made by Commissioner Meinert and seconded by Commissioner Albritton, based on the evidence that Staff had presented on the need for adding the rezoning fee and increasing the special use permit fee, to approve the fee for the application for rezoning to be \$1,000 and the fee to amend an existing special use permit be added to the fee schedule at a fee of \$500. A roll call vote was taken on the motion with the following results.*

Commissioner Padgett voted in the affirmative
Commissioner Meinert voted in the affirmative
Commissioner Albritton voted in the affirmative

Motion passed unanimously.

Commissioner Padgett closed the public hearing.

4:00 General Business, continued:

The Clerk of the Board submitted the revised minutes for signature. She noted for the record that the original minutes that were submitted for approval had accurately reflected what was said at the meeting and that she offered compromise language in amending the minutes.

M/S/P—*Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to approve the minutes for July 26, 2010 and August 2, 2010 with the suggested amendments. There was no discussion. Motion passed unanimously.*

K. 4:00 Commissioner / Administrative Reports:

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

- 1) **Fitzhugh Code of Ethics request** Rodney Fitzhugh, an alternate on the Ridgway Area Joint Planning Board, had sent an email explaining his reluctance to sign the Code of Ethics and asked to change the word “support” in the sentence that stated, “I will support the decision or position of the majority” to “respect”. The Commissioners discussed it briefly and agreed that he could strike the word “support” and substitute “respect” in its place, adding that in their minds respect met the intent of the Code of Ethics.

Mary Deganhart, County Attorney, discussed the following:

- 1) **Notice of Appeal on tower case** She advised the Commissioners that she had received a Notice of Appeal before the Court of Appeals on the communications tower.

Connie Hunt, County Administrator, discussed the following:

- 1) **Medical marijuana information from DA** The District Attorney’s office gave the County a binder titled, “Medical Marijuana Centers Are *De Facto* Legalization of Marijuana.”

Commissioner Meinert discussed the following:

- 1) **Medical MJ work session recap** He related that there was a thorough and lively discussion at the medical marijuana work session about taking it to ballot versus doing it as a County decision, whether it be a ban of all or a portion of medical marijuana activities, or approval with the additional regulations, or whether there should be a moratorium. The group discussed the pros and cons of each and scheduled a decision for August 23. A discussion followed.

Connie Hunt, County Administrator, *continued*:

- 2) **Hart fees** Hart was offering to lock in fees. Deganhart would look at it. Hart needed it by the end of September.
- 3) **Transit Committee** The group met on Friday and all counties but Montrose County created transit advisory committees. They now needed to appoint members. She suggested some members from Ouray County and a discussion followed.
- 4) **City interested in County lots** She met with Patrick Rondinelli, City Manager for the City of Ouray, last week who advised her that the City was interested in talking to the County about leasing, purchasing or getting an easement on some County lots to place a water tank on. She suggested looking at it with Staff and bringing it back to the Board of County Commissioners.
- 5) **Tri-County agenda items for August 17** Commissioner Albritton suggested cancelling the meeting. There were not any issues to discuss and nothing on the agenda so far.
- 6) **Garth Valentine’s request** Valentine submitted a request for County records. A discussion followed as to what was public record and what was not. Deganhart was designated as the point of contact.

Commissioner Albritton had nothing to discuss:

Commissioner Padgett discussed the following:

- 1) **Calendar:** Tomorrow, August 10, a debriefing on the first field trip and a discussion of the next site visit. More discussion followed. Hunt noted that on August 16 at 9 a.m. there would be a work session on the financial consideration piece; a work session on August 23 at 1:15; and a work session on September 21 to summarize public input consensus points, etc. Hunt was trying to set up something on mining regulatory agencies for October 5 at 9 a.m. Commissioner Padgett noted that the ag task force at CCI was on August 18 and was set up for call-in. Commissioner Meinert added that the PAG meeting was on August 12 at 10 a.m. at Land Use.
- 2) **Multi-county meeting** Senator Udall’s staff was trying to get a multi-county meeting together.

M/S/P—*Motion was made by Commissioner Meinert and seconded by Commissioner Albritton to continue to the meeting to August 12, 2010 at 5:30 p.m. at the Ouray County 4-H Event Center. There was no discussion. Motion passed unanimously.*

5:01 The Board of County Commissioners meeting was continued to August 12, 2010:

The Board of County Commissioners did not convene into a Work Session:

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