

RESOLUTION No. 2010-040

**A RESOLUTION OF THE
OURAY COUNTY BOARD OF ZONING ADJUSTMENT
DENYING AN APPEAL OF AN ADMINISTRATIVE DECISION FILED ON BEHALF OF
NIRVANA RANCH, LLC BY GARTH VALENTINE**

WHEREAS, the Board of Zoning Adjustment ("BZA") received an appeal from Nirvana Ranch, LLC, Garth Valentine Manager and Owner ("Applicant") of an administrative decision made by Mark Castrodale, County Planner, as set forth in a letter to Applicant dated November 20, 2009 ("Decision Letter") regarding the Applicant's request for a Sketch Plan / Amended Plat, Resubdivision of a 35-acre parcel identified as Lot 21 within the Dallas Meadows planned unit development ("Property"), which Property lies within the Valley Zone as defined by the Ouray County Land Use Code ("Code"); and

WHEREAS, the Decision Letter provides that the Property does not qualify for further subdivision according to the Code which requires that the density in the Valley Zone is 1 residential unit per 35 acres; and

WHEREAS, based upon the statements made in the Decision Letter, Applicant timely filed his appeal to the BZA by letter dated December 17, 2009 ("Appeal"); and

WHEREAS, the Appeal as filed on behalf of the Applicant also contained a request for interpretation of the "zoning status and the zoning boundaries applicable to the subject property"; and

WHEREAS, numerous amendments and modifications to the original Appeal were submitted by the Applicant (all collectively referred to herein as "Appeal"), culminating with a letter dated September 25, 2010 in which the Applicant advised the BZA that the request for interpretation was being withdrawn; and

WHEREAS, pursuant to Section 19.7 F of the Code, the BZA directed that the Ouray County Planning Commission ("Planning Commission") review the Appeal and provide an opinion to the Board; and

WHEREAS, on February 2, 2010 the Planning Commission reviewed the Appeal and the Planning Commission concluded that it agreed with the Decision Letter and specifically stated that: "There are no vested rights to subdivide and the PUD was effectively rezoned to Valley and no density was available either in the Valley Zone or the preexisting Foothills Zone." and such opinion was forwarded to the BZA; and

WHEREAS, notice of a Public Hearing on the Appeal was published on February 5, 2010 in the *Ouray County Plaindealer* and on February 10, 2010 in the *Ridgway Sun* and the Board of County Commissioners of Ouray County, Colorado, sitting as the BZA held a public hearing on the Application on February 22, 2010 at 1:30 p.m; however, at the request of the Applicant the hearing was continued to September 27, 2010; and

WHEREAS, at the continued hearing on September 27, 2010, the Board heard a presentation by the Ouray County Planner as well as the Applicant relative to the Applicant's request to subdivide the Property and Staff's denial of such request; and

WHEREAS, the Board was advised that the process to subdivide the Dallas Meadows property was begun in September 1978 with the following action by the Planning Commission: "Discussion was held on Glen Bertrand's proposed Dallas Meadows Subdivision. It was recommended that the hay meadow be retained in a minimum of 35 acres and the property east of the river included and divided into lots."; and

WHEREAS, the 20-acre "hay meadow" as shown on the sketch plan for Dallas Meadows is encompassed in the Applicant's current 35-acre parcel; and

WHEREAS, between the filing of the original sketch plan (September 1978) and the approval of the Master Plan (December 1978), the concept for Dallas Meadows was changed to eliminate four lots; maintain the 35-acre parcel and reconfigure the "common" area as shown on the Sketch Plan to four lots; the total number of lots was reduced from forty-eight on the Sketch Plan to forty-two on the Master Plan and the common space was reduced from forty acres to nineteen acres (see Staff Exhibit number 14); and

WHEREAS, the records of the Planning Commission and the Board of County Commissioners of Ouray County ("Board") reflect that the Applicant's 35-acre parcel was maintained as such throughout the formal subdivision process for Dallas Meadows and no written plan was ever presented or approved by the Planning Commission or the Board that suggested that it would be further divided; and

WHEREAS, the "Master Plan" for Dallas Meadows shows that the total number of lots planned for Dallas Meadows was 42, including the Applicant's 35-acre Property; this was the maximum number of lots allowable under the Foothills Zone density meaning that Lot 21 could not have been subdivided further by the original developer or by the Applicant; and

WHEREAS, Applicant did not present any evidence that there was ever a formal plan for further subdivision of the Property as part of any sketch, preliminary or other plan previously submitted to the Planning Commission or the Board; and

WHEREAS, Applicant showed that the original developer may have had a desire to attempt to further divide the Property; however, it was recognized that any such division was subject to further approvals by Ouray County as set forth in the "Declaration and Establishment of Conditions, Reservations and Restrictions for The Dallas Meadows Subdivision" which provides that "Lot 21 may be resubdivided in the event such resubdivision is approved by Ouray County" (Applicant Exhibit 6);

WHEREAS, at the time that Dallas Meadows was subdivided, the property was included within the "Valley/Foothills" Zone and the maximum density for the Foothills Zone was 1 residential unit per five acres, however, Foothills zoning was eliminated as a zone in 2001; and

WHEREAS, the Applicant's Property is located within the Valley Zone in Ouray County as described in Section 3 of the Code and pursuant to the provisions of the Code the residential density for the Valley Zone is one residential unit per 35 acres, therefore the Property (35 acres) cannot be further subdivided; and

WHEREAS, the Applicant applied to subdivide the Property into seven parcels which division would not comply with the original Foothills zoning or the current zoning within the Valley Zone of 1 residential unit per 35 acres; and

WHEREAS, this interpretation is consistent with the decision made by the BZA on September 22, 2008 denying an application to further divide Lot 5, Neff Subdivision, a 21.823-acre parcel in the Valley Zone as set forth in Resolution No. 2008-057; and

WHEREAS, Applicant may submit a request for final plat approval of the Property known as Lot 21 according to the Dallas Meadows Master Plan which would be limited to a 35-acre parcel; and

WHEREAS, as stated in the affidavit of Merlyn Smith (Applicant's Exhibit 43), the Property is a legal parcel without the need for final platting as it is 35 acres or larger as allowed by state law and the definition of "subdivision" as contained in Section 22 of the Code; and

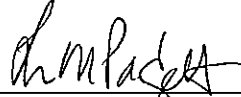
WHEREAS, based upon the information provided in the Appeal, the supporting materials and Staff Report and information and testimony provided from the Applicant the Board enters the following decision on the Appeal;

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 set forth above, the Board unanimously denies the Appeal and upholds the decision of the Ouray County Planner that no further subdivision of the Property is permissible according to the Dallas Meadows Master Plan and because the Property is smaller than the minimum parcel size required in the Valley Zone.

APPROVED AND ADOPTED THIS 4th DAY OF OCTOBER, 2010 RATIFYING ACTION TAKEN BY THE BOARD ON SEPTEMBER 27, 2010.

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



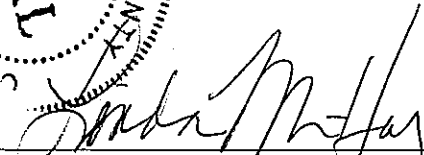
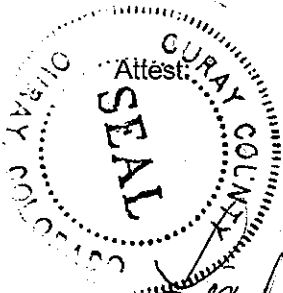
Lynn M. Padgett, Chair



K. Keith Meinert, Vice-Chair



Heidi M. Albritton, Member



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