# AGENDA
# OURAY COUNTY PLANNING COMMISSION
# REGULAR MEETING & WORKSHOP

June 7, 2016, 5 – 8:00 p.m.
Meeting to be held at the Ouray County Land Use Office
111 Mall Road, Ridgway, Colorado

*If all agenda items are not covered in this time frame they may be continued until the next regular meeting.* ****Times are approximate and subject to change*.*** *If an item is finished early the Planning Commission will move directly to the next agenda item. If not a Public Hearing, public comment may or may not be taken during the meeting. Action may be taken at the conclusion of public hearings.*

## I. Call to Order –Workshop of the Ouray County Planning Commission

**1.** Discussion regarding a potentially new Land Use Code Section pertaining to non-mining development on patented mining claims and mill sites in the high country areas of the county.

*Note: The public is encouraged to provide written comments prior to the meeting date.*

## II. Call to Order - Regular Meeting of the Ouray County Planning Commission

**1.** Request for approval of minutes; 5/17/2016

**2.** Request for approval of Ridgway Joint Area Board minutes; 5/25/2016

**3.** New business

**4.** Adjourn Regular Meeting

Copies of land use applications or workshop materials can be obtained at the Land Use Office at 111 Mall Road, Ridgway, CO; by calling 970.626.9775 or e-mailing mcastrodale@ouraycountyco.gov. Comments on the agenda items may be sent to Mark Castrodale, County Planner, P.O. Box 28, Ridgway, CO 81432

RESOLUTION NO. 2016-017

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Michelle Nauer, Clerk & Recorder
Ouray County, CO RP $0.00
04-20-2016 01:47 PM Recording Fee $0.00

# A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO ADOPTING A MORATORIUM ON RESIDENTIAL DEVELOPMENT ON MINING CLAIMS IN THE UNINCORPORATED AREAS OF OURAY COUNTY

**WHEREAS,** the Board of County Commissioners of Ouray County ("Board") periodically directs the Planning Commission to make recommendations for changes and modifications to the Ouray County Land Use Code ("Code"); and

**WHEREAS,** at its work session on April 12, 2016, and at its regular meeting on April 19, 2016 the Board discussed the impacts that residential development on mining claims may have on Ouray County and the potential for imminent residential development of mining claims; and

**WHEREAS,** C.R.S. 29-20-101, et seq., the "Local Government Land Use Control Enabling Act of 1974" provides that local governments are provided broad authority to plan for and regulate the use of land within their respective jurisdictions, balancing the human needs of a changing population with legitimate environmental concerns; and

**WHEREAS,** C.R.S. 29-20-104 provides that a local government has the authority to plan for and regulate the use of land by regulating development and activities in hazardous areas; protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species; preserving areas of historical and archaeological importance; regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights; and

**WHEREAS,** C.R.S. 30-28-102, 30-28-111, 30-28-113 and 30-28-116 also provide broad authorization for the County to adopt a zoning plan, land use regulations, and to revise zoning and land use regulations; and

**WHEREAS** the Board of County Commissioners is authorized by C.R.S. 30-11-107(a) to "make such orders concerning the property belonging to the county as it deems expedient"; and is further authorized to provide for the management of the business and concerns of the county; and

**WHEREAS,** Ouray County has a long history of mineral exploration, development and commercial mineral extraction and processing, which led to the patenting of numerous mining claims in Ouray County, and inherent in the patenting process under the Mining Law of 1872 is a determination that a patented mining claim contains commercially viable mineral deposits; and

**WHEREAS,** the economy of Ouray County has historically relied heavily on mineral extraction, the Board of County Commissioners desires to ensure that mining remains a viable component of the Ouray County economy and finds that residential development of mining claims presents potential for conflict with active, past and future mining operations ; and

**WHEREAS,** residential development on mining claims presents peculiar challenges for property owners and Ouray County staff because of limited road access, potential for damage to county roads, the potential for hazards from rock slides, avalanches, moving snow, and other geo-hazards, the difficulty in constructing on-site wastewater systems or other alternate waste systems complying with County and State regulations pertaining to such, water supply availability in high alpine areas, as well as other limited or unavailable public services and facilities required for public health, safety and welfare to such properties; and

**WHEREAS** such development may have other significant impacts on Ouray County as a whole and its citizens and visitors, including things such as visual impacts; impacts to significant wildlife habitat and wildlife species; impacts to natural resources; impacts to areas of historical importance; impacts to the tourism economy of Ouray County; and impacts to the resources and services of the Ouray County government; and

**WHEREAS,** the Board will tasked the Ouray County Land Use staff, the Ouray County Attorney and the Ouray County Planning Commission to consider land use regulations of other adjoining counties with similar properties, and to consider recommendations for adopting new regulations to address residential development on mining claims in Ouray County; and

**RESOLUTION NO. 2016-017**

**WHEREAS**, C.R.S. §30-28-121 provides that the Board may adopt certain temporary restrictions on the erection, construction, reconstruction or alteration of any building or structure in all or parts of the unincorporated areas of the county, not to exceed six months without a public hearing; and

**WHEREAS**, the Board has determined that a temporary moratorium on residential development on mining claims is necessary in order to provide time to consider and develop regulations, and proposed zoning plan changes as may be recommended, to address these issues, specifically in the high alpine areas of Ouray County at or above an elevation of 9,500' where visual impacts, impacts on the environment, and unavailability of access and county services are most acute, and where a significant number of mining claims exist, with such regulations and zoning recommendations addressing the impacts and challenges described above;

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, AS FOLLOWS:**

1. A temporary moratorium on residential development on patented mining claims and mill sites at or higher than 9,500' above sea level elevation, is imposed for the period April 19, 2016 to and including October 19, 2016. During this period of time, no residential site development permits, residential building permits or septic permits shall be issued for any patented mining claims or mill sites in Ouray County and the erection, construction, reconstruction or alteration of any existing or new residential building or structure shall be prohibited on such properties. The temporary moratorium described herein shall not apply to work under a site development permit, building permit or septic permit issued prior to May 3, 2016. Additionally, the moratorium shall not apply to those cases in which the failure to complete work on a residential structure, in the opinion of the Board, would result in a danger to the health, safety or welfare of the citizens of Ouray County.
2. During the pendency of this moratorium, the Ouray County Land Use Staff, Ouray County Attorney and the Ouray County Planning Commission are directed to work expeditiously to prepare draft regulations relating to residential development on mining claims and to recommend pertinent changes to zoning for the areas of Ouray County that will encompass historic mining district(s) and patented mining claims and mill sites located in such area above 9,500'.
3. The moratorium described herein shall not apply to any structures associated with a State-permitted mine operation or any historical properties located on any mining claim in order to maintain status quo; however, the issuance of any necessary permits for the erection, construction, reconstruction or alteration of any residential structures shall require prior Board approval.

**APPROVED AND ADOPTED THIS** 19 **DAY OF** APRIL, **2016.**

VOTING FOR: Commissioners PADGETT + TISDEL

VOTING AGAINST: Commissioner BATCHELDER

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Lynn M. Padgett, Chair

Ben Tisdel, Vice-Chair

Don Batchelder, Commissioner

Attest:

OURAY COUNTY SEAL COLO

Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board

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Page 1 of 5
Michelle Hauer, Clerk & Recorder
Ouray County, CO RP $0.00
04-26-2016 03:29 PM Recording Fee $0.00

**Resolution #2016-018**

# RESOLUTION
# OF
# THE BOARD OF COUNTY COMMISSIONERS
# Ouray County, Colorado

## Directing the Planning Commission to Recommend Revisions to the Ouray County Land Use Code Regarding High Alpine Residential Development on Patented Mining Claims and Mill Sites in the High Country

**WHEREAS,** the Board of County Commissioners from time to time updates the priorities of the Planning Commission and requests the Planning Commission to provide recommendations to the Board regarding specific topics in the Ouray County Land Use Code; and

**WHEREAS,** the Board of County Commissioners discussed concerns regarding residential development of mining claims in high alpine areas of the County during a work session on April 12, 2016; and

**WHEREAS,** the concerns of the Board include: 1) development pressure on patented mining claims and mill sites in the high country of Ouray County at or above an elevation of 9,500' resulting from more stringent land use code restrictions for such development in adjacent counties; 2) impacts of residential development of mining claims on current and future mineral exploration and extraction activities important to the County's economy; 3) problems of providing basic water, waste, access and similar services and utilities generally expected by landowners in high alpine areas of the County; 4) visual impacts resulting from residential development in alpine areas with little vegetation or other concealing features; 5) impacts to tourism and recreation from increased densities in areas with limited parking at trailheads and scenic overlooks; 6) public safety in areas prone to avalanches, rock slides and other geo-hazards; and impacts of residential development on the fragile high alpine area environment, including tundra environment; and

**WHEREAS,** the Board has adopted a temporary moratorium through October 19, 2016, Resolution 2016-017 on all residential building permits on mining claims and mill sites in the high alpine zone, defined as 9,500' above sea level, in order to allow the Planning Commission, with the assistance of staff, to consider possible revisions to the Ouray County Land Use Code addressing these concerns, and to make recommendations regarding such;

**WHEREAS,** Ouray County has a long history of mineral exploration, development and commercial mineral extraction and processing, which led to the patenting of numerous mining claims in Ouray County, and inherent in the patenting process under the Mining Law of 1872 is a determination that a patented mining claim contains commercially viable mineral deposits and were intended to be used primarily for mining rather than residential purposes; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Ouray County, Colorado, that the Planning Commission, with the assistance of County staff, is requested to review and provide comments and recommendations on the list of questions attached hereto as Exhibit A.

1. The Planning Commission may consider and recommend specific revisions drafted by staff for consideration, or may simply provide the Board with general responses to the posed questions.
2. In order to address these concerns with the promptness required by the terms of Resolution 2016-017, the Planning Commission is requested to provide its recommendations or responses to the Board of County Commissioners on or before August 1, 2016.

**Resolution #2016-018**

APPROVED AND ADOPTED THIS 26 DAY OF April, 2016.

Voting for: Commissioners Padgett, Tisdel + Batchelder
Voting against: None

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Attest:

Lynn M. Padgett, Chair

Ben Tisdel, Vice-Chair

Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board

Don Batchelder, Commissioner

Exhibit A

## Planning Commission Recommendations on High Country Development

- Reference materials for PC will be the 4/12 memo and packet that was provided to the BOCC from the County Attorney which includes attachments of certain state statutes and copies of relevant San Miguel and San Juan County high country regulations. The restrictions on high country residential development being implemented by counties adjacent to Ouray County may be placing development pressures on Ouray County which does not have similar restrictions.
- In anticipating a meeting between BOCC and PC for discussion, any additional or amended items for the PC to consider will be by agreement of the BOCC and subsequently put in writing to the PC.

## Goals of Seeking PC Recommendation on High Country Development Regulations:

- Recommendation on regulations on high country residential development located on patented mining claims and mill sites in the high country of Ouray County at or above an elevation of 9,500' such as typical of patented mining claims.
- Recommendation desired will first consider if PC recommends including regulations or restrictions, in concept, that will be either located in code and/or site development permits that are simple, predictable for staff and the applicant, efficient and relatively easy to administrate.
- Commissioner Batchelder would like the recommendation to adhere to the KISS principle (Keep It Simple Stupid).

## Process for Planning Commission with support of Land Use Staff and County Attorney:

1. Make recommendations on concepts/elements of regulations or restrictions with respect to High Country residential development.
2. Staff will put the conceptual recommendations into draft code and/or changes to a site development permit.
3. Planning Commission will hold a Public Hearing on potential code or policy changes and issue a formal recommendation to the BOCC at the conclusion of the Public Hearing.

## Specific concepts/elements the BOCC desires a recommendation on --

A. Definition of High Country and applicability:
   - E.g. -- recommendation on if the definition of High Country and any specific residential development restrictions should apply to residential development on patented mining claims and mill sites in the high country of Ouray County at or above an elevation of 9,500' within Ouray County or if Planning Commission (PC) recommends a different definition or applicability.

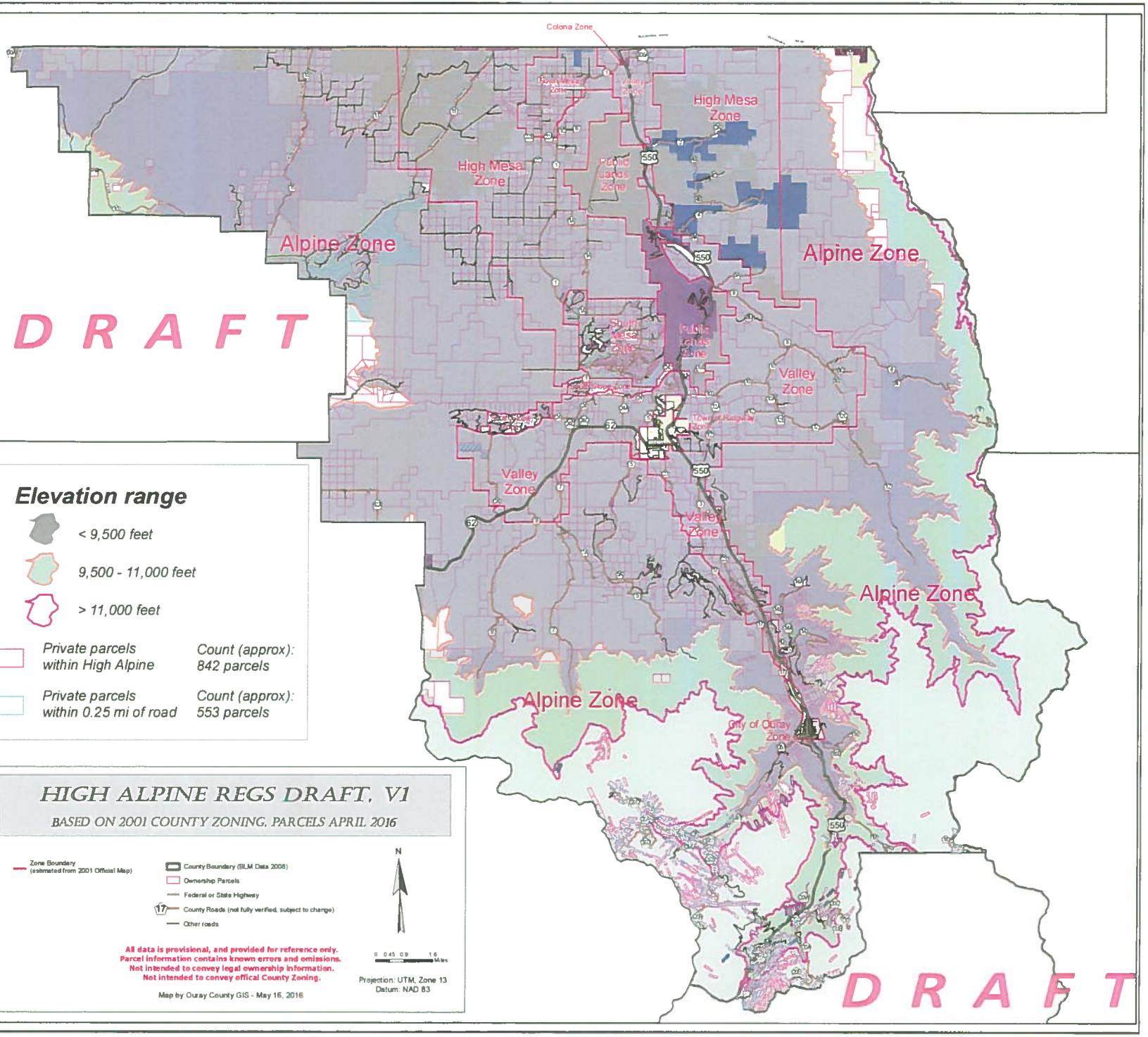
**Exhibit A**

B. Should Ouray County have any restrictions or limitations on residential use and residential structures in the High Country? The elements the BOCC is interested in getting a recommendation on from the Planning Commission, identified in one or both of adjacent counties' codes are:
   - Should Ouray County have a minimum parcel size of 5 acres to qualify for a site development/building permit for a residential structure in the High Country?
   - Should Ouray County require a maximum density of 1 unit (no Accessory Dwelling Unit) on patented mining claims and mill sites in the high country of Ouray County at or above an elevation of 9,500'? Should this limitation exist county-wide?
   - Should Ouray County require additional minimum setbacks in the High Country so that they are the same as 35-acre conforming parcels throughout the county? [reference - Ouray County Land Use Code Section 3.85b]
   - Should Ouray County require residential development to demonstrate that the project has been designed in a manner that will protect and minimize impacts to important historic (historic building, town site, mining district, cultural) or environmental features of the site (such as timber, plants, wildlife, drainages, wetlands, geologic features)? If so, can it be accomplished with the KISS principle in mind?
   - Should site development protect existing public trails (i.e. prevent obstructions such as driveways crossing the trails, fencing obstructing the trails, or structures being located so as to maximize a buffer to trails)?
   - Should Ouray County require primary access to residential development be through an Ouray County Road or State Highway vs. access having no nexus to public roads within Ouray County?
   - Should require adequate parking for the proposed residential use on-site in the High Country? Should this requirement exist county-wide, so that any Ouray County development will not rely on property users to park on County Roads?
   - Should Ouray County require utilities for High Country residential development to be installed in ways that minimize impacts to environment and scenery? [One adjacent county requires features to be installed underground or placed within structures]. Should Ouray County restrict placement of fuel, water tanks, generators, etc. to be located within a structure or be put underground?
   - Should Ouray County require High Country residential buildings to blend with the natural surroundings?
   - Should Ouray County restrict square footage of High Country residential dwelling units to 1,000 square feet? Should Ouray County restrict square footage of High Country residential dwelling units to 1,000 square feet, with the ability to earn potential bonus 500 square feet if certain incentive conditions are met, such as in San Miguel County, up to 2,500 square feet? [For reference, examine San Miguel County code, San Juan County code and previous Ouray County proposed Section 30 draft.]

**Exhibit A**

- Should Ouray County eliminate all residential buildings within the tundra ecosystem? Or are existing code and site development permit considerations adequate for protection of tundra and watershed health?
- Should Ouray County require a Special Use Permit (SUP) if building is a vacation rental or commercial use to require as conditions of use adequate parking (off county roads), trash, water, sanitation, cell/satellite service, and emergency access? [For reference, see Ouray County notes on a potential county-wide ordinance on regulations for short-term/vacation rentals]. Are there regulations for short-term rentals that should be different for High Country development than county-wide?
- Should Ouray County restrict or ban residential development in the High Country that results in an increased demand for public services (plowing/county road maintenance, emergency response, etc) beyond what is currently provided by the County?
- Should Ouray County restrict High Country driveway or private road cuts in a manner to make them subject to review to ensure they are designed to minimize impacts to environmental and scenic values? If so, can it be accomplished with the KISS principle in mind?
- Should Ouray County restrict High Country residential driveway widths to 10 feet? Should Ouray County restrict blasting to create residential driveways in the High Country?
- Should Ouray County consider have more restrictive building height requirements for residential development within the High Country? [currently buildings county-wide can be up to 35 feet high; for reference see adjacent San Miguel County code that limits High Country buildings to 12 to 20 feet high]
- Should there be referrals to any County or State/Federal agencies that are specific to High Country residential development?
- Should there be any reference exhibits to any potential new code or permit applications?
    - The BOCC is in consensus that 9,500' elevation should be as referenced in the latest published 24,000 USGS quadrangle

# OURAY COUNTY, COLORADO



# QUESTIONS ON HIGH ALPINE REGULATIONS
# STAFF RESPONSE

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## Specific concepts/elements the BOCC desires a recommendation on –

A. Definition of High Country and applicability:
   - E.g. -- recommendation on if the definition of High Country and any specific residential development restrictions should apply to residential development on patented mining claims and mill sites in the high country of Ouray County at or above an elevation of 9,500' within Ouray County or if Planning Commission (PC) recommends a different definition or applicability.
     - **Staff Response – No recommended change. If this is going to change to a lower elevation, this needs to happen sooner rather than later in the process.**

B. Should Ouray County have any restrictions or limitations on residential use and residential structures in the High Country? The elements the BOCC is interested in getting a recommendation on from the Planning Commission, identified in one or both of adjacent counties' codes are:
   - Should Ouray County have a minimum parcel size of 5 acres to qualify for a site development/building permit for a residential structure in the High Country?
     - **Staff Response – No opinion.**
   - Should Ouray County require a maximum density of 1 unit (no Accessory Dwelling Unit) on patented mining claims and mill sites in the high country of Ouray County at or above an elevation of 9,500'? Should this limitation exist county-wide?
     - **Staff Response – Yes and No.**
   - Should Ouray County require additional minimum setbacks in the High Country so that they are the same as 35-acre conforming parcels throughout the county? [reference - Ouray County Land Use Code Section 3.85b]
     - **Staff Response – 1. The allowance for reduced setbacks for lots of 2 acres or less in the Alpine Zone should remain. (ie. 10' side/back, 25' front) Also, reduced setbacks could be allowed if needed in order to mitigate an issue on the parcel such as drainage, tundra, visual impact, etc.**
   - Should Ouray County require residential development to demonstrate that the project has been designed in a manner that will protect and minimize impacts to important historic (historic building, town site, mining district, cultural) or environmental features of the site (such as timber, plants, wildlife, drainages,

wetlands, geologic features)? If so, can it be accomplished with the KISS principle in mind?

  - **Staff Response – This is already part of the Site Development Permit process. May want to modify to include historic structures. Note: Staff is not an expert in these areas. If we do a site review and identify a possible issue, either the County or the property owner needs to bring in an expert in the specific field to make a final determination.**

- Should site development protect existing public trails (i.e. prevent obstructions such as driveways crossing the trails, fencing obstructing the trails, or structures being located so as to maximize a buffer to trails)?
  - **Staff Response – Possibly consider "encouraging" this but requiring it may have unintended consequences. Also, this highlights a separate issue; Staff believes that a general site plan should be part of the site development permit process. The site plan would become part of the site development permit and would be recorded.**
- Should Ouray County require primary access to residential development be through an Ouray County Road or State Highway vs. access having no nexus to public roads within Ouray County?
  - **Staff Response – Possibly require notice to appropriate jurisdictions but not prohibit. This could have unintended consequences.**
- Should require adequate parking for the proposed residential use on-site in the High Country? Should this requirement exist county-wide, so that any Ouray County development will not rely on property users to park on County Roads?
  - **Staff Response – "Adequate parking" may not really be the issue. If this issue is parking in the county ROW, then this issue needs to be addressed in a different fashion. ie. Model Traffic Code, or similar…**
- Should Ouray County require utilities for High Country residential development to be installed in ways that minimize impacts to environment and scenery? [One adjacent county requires features to be installed underground or placed within structures]. Should Ouray County restrict placement of fuel, water tanks, generators, etc. to be located within a structure or be put underground?
  - **Staff Response – This is fine, no concerns.**
- Should Ouray County require High Country residential buildings to blend with the natural surroundings?
  - **Staff Response – Is this everything? In other words, does this go beyond Visual Impact reg's and addresses all structures, whether or not they are visible from the highway? Other than that clarifying question, Staff has no opinion.**
- Should Ouray County restrict square footage of High Country residential dwelling units to 1,000 square feet? Should Ouray County restrict square footage of High Country residential dwelling units to 1,000 square feet, with the ability to earn potential bonus 500 square feet if certain incentive conditions are met, such as in San Miguel County, up to 2,500 square feet? [For reference, examine San

Miguel County code, San Juan County code and previous Ouray County proposed Section 30 draft.]

  - **Staff Response – Some sort of restriction makes sense. In addition to looking at the codes from the adjacent jurisdictions we should take strong look at how this issue was addressed in Section 30.**

- Should Ouray County eliminate all residential buildings within the tundra ecosystem? Or are existing code and site development permit considerations adequate for protection of tundra and watershed health?
  - **Staff Response – No real opinion here. We do need some way of identifying what is "tundra".**
- Should Ouray County require a Special Use Permit (SUP) if building is a vacation rental or commercial use to require as conditions of use adequate parking (off county roads), trash, water, sanitation, cell/satellite service, and emergency access? [For reference, see Ouray County notes on a potential county-wide ordinance on regulations for short-term/vacation rentals]. Are there regulations for short-term rentals that should be different for High Country development than county-wide?
  - **Staff Response – The BOCC is currently addressing short-term rentals. All other commercial or quasi-commercial uses are adequately addressed in zoning and Section 5.**
- Should Ouray County restrict or ban residential development in the High Country that results in an increased demand for public services (plowing/county road maintenance, emergency response, etc) beyond what is currently provided by the County?
  - **Staff Response – Technically this would ban any/all development. Makes sense to put various processes (ie. more than 1) in place to notify property owners that services will not be expanded and are limited to non-existent in these areas.**
- Should Ouray County restrict High Country driveway or private road cuts in a manner to make them subject to review to ensure they are designed to minimize impacts to environmental and scenic values? If so, can it be accomplished with the KISS principle in mind?
  - **Staff Response – Probably a good idea but will be difficult to implement at current staffing levels.**
- Should Ouray County restrict High Country residential driveway widths to 10 feet? Should Ouray County restrict blasting to create residential driveways in the High Country?
  - **Staff Response – 10' could severely restrict EMS vehicle access. No opinion on restricting blasting for driveway installation.**
- Should Ouray County consider have more restrictive building height requirements for residential development within the High Country? [currently buildings county-wide can be up to 35 feet high; for reference see adjacent San Miguel County code that limits High Country buildings to 12 to 20 feet high]

    - **Staff Response – Limitations make sense. Suggest looking at Section 30 draft.**
- Should there be referrals to any County or State/Federal agencies that are specific to High Country residential development?
    - **Staff Response – Makes sense if applicable to the specific project.**
- Should there be any reference exhibits to any potential new code or permit applications?
    - **Staff Response – Yes. If we go with the "9,500' or above" then that line needs to be identified on a County-produced map. Will need to provide Land Use Staff with a GPS unit that has a geo-referenced map installed.**

**Note:** The BOCC is in consensus that 9,500' elevation should be as referenced in the latest published 24,000 USGS quadrangle

**General Notes:**

- Site Development Permit process should be revised to require a site plan showing the general location of the proposed driveway and any proposed structures. The site plan approved as part of the SDP process would be recorded with the SDP and would become part of a future building permit application.

**RESOLUTION NO. 2016-019**

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Michelle Nauer, Clerk & Recorder
Ouray County, CO RP $0.00
05-04-2016 09:11 AM Recording Fee $0.00

# A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY ADOPTING A POLICY FOR WINTER MAINTENANCE OF COUNTY ROADS

**WHEREAS,** the Board of County Commissioners is authorized to construct and maintain the county roads within Ouray County, and to expend budgeted funds for the same, pursuant to C.R.S. 30-11-107 and C.R.S. 43-2-111; and

**WHEREAS,** Ouray County is a small, rural county with limited revenues and budget and in which the county roads are primarily dirt or gravel, and the ability to maintain the county roads in both summer and winter is limited by available resources; and

**WHEREAS** the Board of County Commissioners is authorized by C.R.S. 30-11-107(a) to "make such orders concerning the property belonging to the county as it deems expedient"; and

**WHEREAS** the Board of County Commissioners is further authorized to provide for the management of the business and concerns of the county, C.R.S. 30-11-107(e); is empowered pursuant to C.R.S. 18-9-117 to make such orders, rules and regulations for the administration and maintenance of county-owned property as it deems appropriate, including restrictions on public property as to time manner, and use of all vehicles as to place time and manner of use or to limit permitted activities on county-owned property; and

**WHEREAS,** C.R.S. 42-4-111(1)(v) allows local authorities to adopt temporary regulations as may be necessary to cover special conditions; and C.R.S. 42-4-106(1) allows local authorities, with respect to highways under their jurisdiction, to prohibit the operation of vehicles upon such highways, for a total period not to exceed ninety days in any one calendar year, when such highways will be damaged or destroyed as a result of climatic conditions; and

**WHEREAS,** the Board of County Commissioners recognizes the importance that recreational access to public lands, and recreational endeavors on both private and public lands, play in the economic well-being of the county and the importance of such activities to the overall health and welfare of the residents of and visitors to the county; and

**WHEREAS,** the Board of County Commissioners additionally recognizes the importance of private landowners to have reasonable access to their properties, including properties in remote areas of the county in which recreational activities also occur; and

**WHEREAS,** the Board recognizes that over the past several years there has been an increase in construction of residences in areas of the county with limited or no winter road maintenance; and

**WHEREAS,** property owners in areas without winter road maintenance have on occasion been unaware of the limited access they may have by motorized vehicles during the winter, or the importance that county roads may play in recreational access and recreational activities during the winter months; and

**WHEREAS,** the Board recognizes that there has concurrently been an increase in popularity of winter recreation in the county, often in areas served by county roads that have no winter maintenance by the county or have limited winter maintenance; and

**WHEREAS,** the perceived competition between private landowners requiring access to their properties during the winter and winter recreationalists has resulted in friction and debate regarding the extent to which county roads should be maintained during the winter months, either by the county directly or through county-approved winter maintenance agreements; and

**WHEREAS,** the Board of County Commissioners desires to articulate clear guidelines that will inform the public, property owners, recreational users of county roads and adjoining public lands, balance the various needs and interests of the county and its residents and visitors, and provide guidance for future decisions of the Board in considering future requests of the public and private landowners, by establishing a policy for winter road maintenance, including plowing of roads by the county and through winter maintenance agreements;

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, AS FOLLOWS:**

The Board of County Commissioners hereby approves the following policy regarding winter use and maintenance, including plowing or other removal of snow from county roads:

1. All roads that were maintained, plowed, or otherwise were the subject of snow removal ("maintained") during the winter months of November 2015 through April 2016 ("2015-16") will be maintained in future years, subject to the availability of funds to maintain those roads that have been maintained by the Ouray County Road and Bridge Department, and subject to desired renewal of road maintenance agreements by those landowners with whom the County had road maintenance agreements in 2015-16. Roads maintained by the County during 2015-16 are depicted as the Snow Plow Routes shown on Exhibit A hereto, the Winter Maintenance Map.

2. Any road not included as an existing County Snow Plow Route shown on Exhibit A or which is not the subject of a private road maintenance agreement which is renewed as set forth in paragraph 1 above, will not be maintained in the future absent a finding by the Board of County Commissioners upon its own review, or at the request of a landowner or other members of the public that such maintenance, whether by the County or by a private landowner or other member of the public meets the following criteria:

   a. Resources of the County are available, or will not be unduly impacted.

   b. Proposed maintenance has considered and addressed reasonably anticipated natural hazards such as moving, sliding or falling rocks, snow, ice, avalanches, and other similar geo-hazards.

   c. Liability, or potential liability, of the County has been satisfactorily addressed through insurance, indemnification, or other means to ensure that the County and its limited financial resources are not placed at risk unnecessarily or unreasonably.

   d. To the extent that maintenance contemplates public access, that public safety and public convenience in parking have been considered and appropriately addressed.

   e. Watershed protection has been considered and addressed if necessary.

   f. Wildlife protection and habitat protection have been considered and addressed if necessary.

   g. The proposed winter maintenance and subsequent use of the road will not damage the road.

   In reviewing these criteria, the Board of County Commissioners will also take into consideration, and balance in the best interests of the county as a whole, the economic benefits of recreational activities and tourism, the interests of private property owners to have access to their properties, the economic interests of private property owners engaging in commercial activities, and the preservation of access to public lands for recreation to the maximum degree practical.

3. The Board of County Commissioners finds and confirms that nothing in this resolution or policy shall prevent any owner of private property from accessing property during the winter months. The right of a property owner to access his/her property is recognized and will be protected as a use by right. Access may be limited to means that do not include motorized vehicles or vehicles typically driven on maintained highways and roads.

4. The Board of County Commissioners further finds and confirms that nothing in this resolution or policy shall prevent any member of the public from accessing public lands during the winter months. Access to public lands for recreational purposes shall be preserved to the maximum extent practicable. Access may be limited to means that do not include motorized vehicles or vehicles typically driven on maintained highways and roads.

5. The Board of County Commissioners directs county staff to review and provide the Board with guidance on any other county policies or land use regulations that should be revised, amended or repealed in order to ensure consistency with this policy, or to assist in the implementation if this policy.

6. Staff is further directed to provide guidance to the Board of County Commissioners on mechanisms for ensuring that property owners buying property in Ouray County or building new residential homes or other residential structures in Ouray County are informed of the potential limitations of road maintenance, availability of utilities and other services in Ouray County due to its rural and mountainous character, and that evidence of a property owner's acknowledgement of these limitations is recorded and runs with the title to the land so that future purchasers or owners of such property are similarly aware of the conditions by which one agrees to live in rural Ouray County.

7. Nothing in this policy obligates the County to continue to maintain any county road in the future, and the County may cease providing winter road maintenance on any road at any time for any reason at the sole discretion of the Board of County Commissioners.

APPROVED AND ADOPTED THIS 3rd DAY OF May, 2016.

Voting for: Commissioners Tisdel & Batchelder
Voting against: None
Absent: Commissioner Padgett

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Attest:

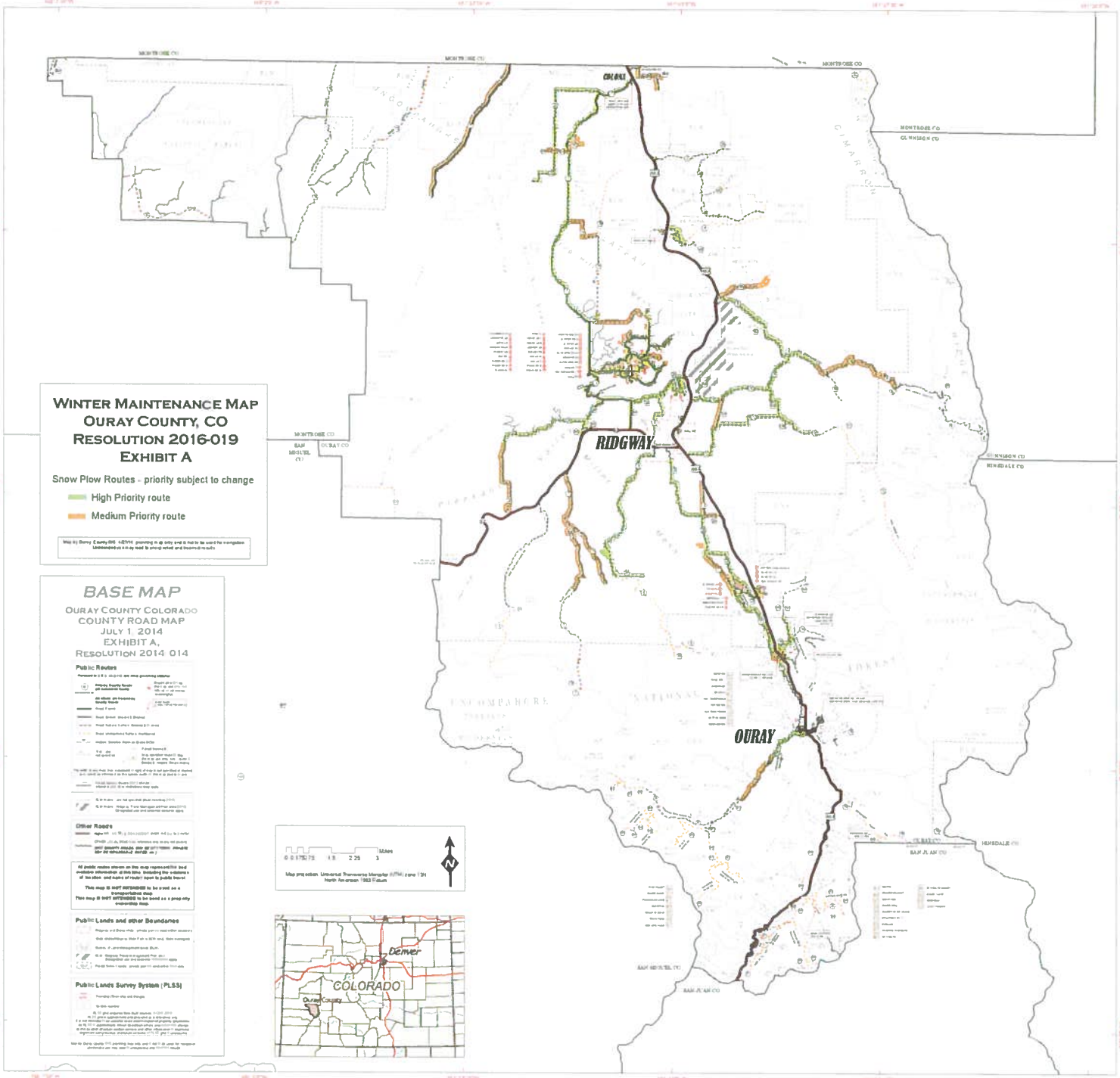
OURAY COUNTY COLORADO SEAL

Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board

ABSENT
Lynn M. Padgett, Chair

Ben Tisdel, Vice-Chair

Don Batchelder, Commissioner


WINTER MAINTENANCE MAP
OURAY COUNTY, CO
RESOLUTION 2016-019
EXHIBIT A
Snow Plow Routes - priority subject to change
High Priority route
Medium Priority route
BASE MAP
OURAY COUNTY COLORADO
COUNTY ROAD MAP
JULY 1 2014
EXHIBIT A,
RESOLUTION 2014 014
Public Routes
Other Roads
Public Lands and other Boundaries
Public Lands Survey System (PLSS)
RIDGWAY
OURAY
MONTROSE CO
GUNNISON CO
HINSDALE CO
SAN JUAN CO
SAN MIGUEL CO
Denver
COLORADO
Ouray County

MEMORANDUM

To: Board of County Commissioners
Cc: Connie Hunt, Mark Castrodale,
From: Marti Whitmore, County Attorney
Date: March 30, 2016
Re: High Alpine Development Regulation and Restrictions

SUMMARY: The BOCC asked me to research the current land use regulations of other counties and provide legal perspective on a potential moratorium on building permits or other permissions in the high alpine areas of the county pending possible adoption of land use code provisions addressing such building or development. The BOCC does have the authority to adopt a six-month moratorium without a public hearing, or a longer moratorium if a public hearing is held. Any moratorium must be reasonably related to the specific contemplated regulations or land use provisions.

Other counties adjacent to Ouray County do have limitations not currently in the OCLUC affecting building and development in high alpine areas. Adoption of additional building and development restrictions in high alpine areas would also be consistent with proposed winter road maintenance policy.

DISCUSSION:

The BOCC may impose a temporary moratorium on building, construction, reconstruction, or alterations, or may impose temporary regulations on such activities. A moratorium or temporary regulations adopted *without a public hearing* may not exceed six months. C.R.S. 30-28-121. The Colorado Supreme Court has recognized broader authority to impose a longer moratorium, as necessary, under the Land Use Enabling Act to "...provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights." C.R.S. 29-20-102. *Droste v. Board of County Commissioners (Pitkin County),* 159 P.3d 601 (Colo. 2007). The Court upheld a ten month moratorium as reasonable under the broader authority where Pitkin County had held a public hearing prior to imposing the moratorium.

The County's authority over land use is contained in Title 29, Article 20 and Title 30, Article 28. *Wilkinson v. Board of County Commissioners, 872 P.2d 1269* (Colo. App. 1993). Generally, the broader authority is contained in Title 29. This authority does not require adoption of "HB 1041" regulations; that authority is contained in another section of statute (Title 24, Article 65.1), and is limited to specific matters of state interest. However, some counties combine the various authorities in promulgating their land use codes and permitting regulations.

The authority granted to the Board of County Commissioners by the Land Use Enabling Act, in C.R.S. 29-20-104, and which authority "...shall not limit any power or

authority presently exercised or previously granted," includes "...the authority to plan for and regulate the use of land by:

(a) Regulating development and activities in hazardous areas;
(b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;
(c) Preserving areas of historical and archeological importance;
(d) Regulating, with respect to the establishment of roads on public lands administered by the federal government...(*omitting interesting language re R.S. 2477)*
(e) Regulating the location of activities and developments which may result in significant changes in population density;
(f) Providing for phased development of services and facilities;
(g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and
(h) Otherwise planning for and regulating the use of land so as to provide a planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights."

Adjoining counties do have more stringent regulations governing development and building in high alpine areas than Ouray County. This discrepancy could result in more development interest in Ouray County, particularly in high mountain areas near common boundaries with other counties.

**San Juan**: The Land Use Code includes a Mountain Zoning District, as well as a Mining Overlay District. The stated intent of the Mountain Zoning District is "..to preserve the natural and scenic environment of the mountains in San Juan County while allowing activities and uses that normally occur with *seasonal access* in the backcountry of San Juan County. Sections of the County which are unique because of location, physical and scenic characteristics, historic resources and natural hazards or that have economic potential are designated within certain Overlay Zoning District and may be subject to additional requirements." (emphasis added to highlight the connection between winter road maintenance/access and land use regulations)

The Mineral Resources Overlay District intent is stated to be "...to protect access to the mineral deposits which are known to be, or expected to be, within the district. Commercial and industrial uses, except for those related to mineral exploration and extraction, are not permitted within the Overlay District. Residential development shall be kept at a low density to avoid conflict between mining and residential uses."

There is also a Scenic Preservation Overlay District "to prevent development from adversely affecting the scenic and historic assets of the County to the greatest degree possible..."

The Mountain Zoning District limits the uses by right to mining and milling and "...activities which do not involve any construction or development of any sort (such as

grazing, camping, picnicking, hiking and outdoor recreation)..." All other uses, including residential use, are subject to review. "Residential development of any sort within the alpine tundra ecosystem is strictly prohibited. All other development, including temporary and permanent structures, within the alpine tundra ecosystem is strongly discouraged and may be permitted only under limited circumstances when no reasonable or feasible alternative to such development is available. Ancillary uses associated with approved development at lower elevations (such as ski lift towers and other structures), necessary communication towners, and mining structures which cannot realistically be located underground are among the types of development which may be approved for location in the alpine tundra ecosystem...."

Construction is also prohibited in the Scenic Preservation Overlay District: "Within the Scenic Preservation Overlay District, only activities which do not involve any construction or development of any sort, including disturbing or soil or trees (such as grazing, camping, picnicking, hiking and outdoor recreation) shall be permitted as uses by right. All other uses within this zone shall be uses subject to review."

The County has identified some of the overlay zoning by Township, Section and Range; reference materials include avalanche maps and other hazard maps. Interestingly, even in the two residential zoning district – urban and rural – only activities not requiring construction are uses by right. Other uses, including residential, require special review and permit.

San Juan County limits the size of residences at or above 11,000, but below the tundra zone to 1,000 square feet, with a referenced resource to determine elevation of a property. Generally speaking, porches and decks are excluded from the calculation of square footage. A single accessory building up to 200 square feet is also permitted. Mining structures are not subject to the square footage limitations.

**San Miguel**: The County has a High Country Area (HCA) zoning district. Section 5-321 of the SMLUC is attached for reference. The zone is "intended to protect and preserve the alpine, sub-alpine and scenic hillsides in the upper San Miguel watershed for their historic and natural landscapes and retain the relatively undeveloped character of these backcountry areas....This Zone District is comprised of public lands managed by the United States Forest Service (USFS) and patented mining claims. Much of this Zone District was once mined and may again be mined.....The size, scale, and location of Single-family Dwellings and Accessory Structures are limited to avoid conflict with past and/or future mining...."

Single-family dwellings are limited to 1,000 square feet of Floor Area, with some ability to increase the square footage based on certain design criteria, but in no case can the total square footage exceed 2,500 square feet. There can also be one detached accessory structure of 200 square feet or less.

The HCA is further described as: "(t)hese areas are typified by a lack of improved or maintained roads, little or no utilities or infrastructure and very limited or

sparse development other than historic mining remnants from past mining activities. Development activities in these areas should be limited due to high elevation, environmentally sensitive and geologically hazardous areas, steep terrain, limited access, mining remnants and other site constraints. If residential development occurs it should be limited to cabins and small scale residential development consistent with the type of development that historically occurred in the area. Development that results in a demand for public services beyond what is currently provided should be prohibited…"

Applications for development on a patented mining claim must include information addressing applicable state and federal requirements for reclamation, stabilization bonding, storm water drainage, and other matters to protect the public health, safety and welfare of the owners, occupants and neighbors. A report by a Colorado P.E. identifying all surface or subsurface mining related hazards and recommended mitigation measures is also required.

**Hinsdale**: The County does not appear to have any special regulations for high mountain areas adjoining Ouray County. There are provisions for the Piedra Zone, adjoining Mineral County, that provide limitations on development.

ADDENDUM TO MEMORANDUM

To: Board of County Commissioners
Cc: Connie Hunt, Mark Castrodale,
From: Marti Whitmore, County Attorney
Date: April 6, 2016
Re: High Alpine Development Regulation and Restrictions

NOTE: I found another statute that is pertinent to your consideration of high alpine regulations. C.R.S. 34-1-305 is attached for your information. In part, it provides:

"After July 1, 1973, no board of county commissioners.....shall, by zoning, rezoning, granting a variance, or other official action or inaction, permit the use of any area known to contain a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor..."

This statute is applicable only to "populous counties," defined in C.R.S. 34-1-302 as those counties having a population of sixty-five thousand (65,000) inhabitants. Therefore it is not applicable to Ouray County. However, the authority of a county to adopt land use regulations is sufficiently broad (see prior memorandum) that a non-populous county could use the criteria of this statute in adopting regulations to ensure that future extraction of mineral deposits is not inhibited.

A patented mining claim is one for which the federal government has passed title to the owner of both mineral interest and surface interest, making it totally private land. In order to patent a mining claim under the Mining Law of 1872, which has not been substantially amended, one must demonstrate that there are commercially available mineral deposits, and that the claimant has taken certain actions to produce commercial minerals. Thus, by definition, a patented mining claim contains a commercial mineral deposit. Prohibiting construction of a non-mining structure on the property would seem to be consistent with the intent of the state statute.

Unpatented mining claims include only the right to explore for minerals deposits and to extract a mineral deposit. Until the claim is patented, under the Mining Law of 1872, the federal government continues to hold title to the land, and construction of non-mining related structures is prohibited under the federal law. So, no building permit should issue in any event on these properties.

§ 34-1-305. Preservation of commercial mineral deposits for extraction.

**Colorado Statutes**

**Title 34. MINERAL RESOURCES**

**GEOLOGICAL SURVEY**

**Article 1. Geological Survey**

**Part 3. PRESERVATION OF COMMERCIAL MINERAL DEPOSITS**

*Current through Chapter 54 of the 2016 Legislative Session*

**§ 34-1-305. Preservation of commercial mineral deposits for extraction**

(1) After July 1, 1973, no board of county commissioners, governing body of any city and county, city, or town, or other governmental authority which has control over zoning shall, by zoning, rezoning, granting a variance, or other official action or inaction, permit the use of any area known to contain a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.

(2) After adoption of a master plan for extraction for an area under its jurisdiction, no board of county commissioners, governing body of any city and county, city, or town, or other governmental authority which has control over zoning shall, by zoning, rezoning, granting a variance, or other official action or inaction, permit the use of any area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.

(3) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or any other governmental authority which has control over zoning from zoning or rezoning land to permit a certain use, if said use does not permit erection of permanent structures upon, or otherwise permanently preclude the extraction of commercial mineral deposits by an extractor from, land subject to said use.

(4) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or other governmental authority which has control over zoning from zoning for agricultural use, only, land not otherwise zoned on July 1, 1973.

(5) Nothing in this section shall be construed to prohibit a use of zoned land permissible under the zoning governing such land on July 1, 1973.

(6) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or any other governmental authority from acquiring property known to contain a commercial mineral deposit and using said property for a public purpose; except that such use shall not permit erection of permanent structures which would preclude permanently the extraction of commercial mineral deposits.

**Cite as C.R.S. § 34-1-305**

**History.** L. 73: p. 1048, § 1. C.R.S. 1963: § 92-36-5 . L. 75: (6) added, p. 1336, § 2, effective June 29.

**Case Notes:**

**ANNOTATION**

**Law reviews.** For article, "Severed Minerals as a Deterrent to Land Development", see 51 Den. L. J. 1 (1974).

**This section does not deprive landowners of reasonable use of their property,** and thus does not constitute a governmental taking. Cottonwood Farms v. Bd. of County Comm'rs, 725 P.2d 57 (Colo. App. 1986), aff'd, 763 P.2d 551 (Colo. 1988).

**Local governments can permit uses compatible with mining.** By zoning, rezoning, granting a variance, or other action or inaction, local governments can permit any use of land known to contain a commercial mineral deposit so long as the permitted use is not incompatible with mining, such as erecting permanent structures on this land; the preservation act does not require local governments to allow mining in any area where it is commercially practicable, but only to preserve access to the mineral deposits. C & M Sand & Gravel v. Bd. of County Comm'rs, 673 P.2d 1013 (Colo. App. 1983).

# San Juan County Regulations

San Juan County LUC

.1 Boundaries shown as following or approximately following the limits of any municipality are construed as following such limits.

.2 Boundaries shown as following or approximately following streets and roads are construed to follow the centerline of such streets and roads.

.3 Boundary lines which follow or approximately follow platted lot lines, mining claim lines or other property lines as shown on tax maps are construed as following such lines.

.4 Boundaries shown as following or approximately following section lines, half-section lines, or quarter-section lines are construed as following such lines.

.5 Boundaries shown as following or approximately following railroad lines are construed to lie midway between the main tracks of such railroad lines.

.6 Boundaries shown as following or approximately following the centerline of streams, rivers, or other continuously flowing water courses are construed as following the channel centerline of such water courses taken at mean low water, and in the event of a natural change in the location of such streams, rivers, or other water courses, the boundaries are construed as moving with the channel centerline.

.7 Boundaries shown as following or approximately following ridgelines are construed as following the highest points of the ridgelines.

.8 Boundaries shown as separated from, and parallel or approximately parallel to, any of the features listed in paragraphs .1 through .7 above are construed to be parallel to such features and at such distances therefrom as are shown on the map.

.9 If the zoning or overlay districts which apply to a specific property cannot be determined by an applicant, the Land Use Administrator will make the determination on a case by case basis. The applicant must provide all information needed to make the determination, such as a property survey and proof of ownership. If the Land Use Administrator is unable to make such determination or has a conflict of interest, the Planning Commission will make the determination.

## 1 – 106 STATEMENT OF INTENT AND PURPOSE FOR EACH ZONING AND OVERLAY DISTRICT

The following section specifies the purpose and intent of each Zoning and Overlay District established by this Resolution. In determining the boundaries of the Zoning Districts set forth hereunder, consideration has been given to the physiographic, scenic, historical, geological and other natural characteristics of the various areas of the County and the individual suitability of those areas for particular activities, uses, potential development and preservation.

### .1 MOUNTAIN ZONING DISTRICT INTENT

The intent of the Mountain Zoning District is to preserve the natural and scenic environment of the mountains in San Juan County while allowing activities and uses that normally occur with seasonal access in the backcountry of San Juan County. Sections of the County which are unique because of location, physical and scenic characteristics, historic resources and natural hazards or that have economic potential are designated within certain Overlay Zoning Districts and may be subject to additional requirements.

.2 RURAL RESIDENTIAL ZONING DISTRICT INTENT

The intent of the Rural Residential Zoning District is to allow single-family residential use on larger tracts of rural land with individual on-site sewer and water services and good roadway access.

.3 URBAN RESIDENTIAL ZONING DISTRICT INTENT

The intent of the Urban Residential Zoning District is to permit smaller-lot subdivisions, lower density multi-family units and limited commercial businesses with approved sewer and water systems where appropriate near an existing town, resort or similar development.

.4 SCENIC PRESERVATION OVERLAY DISTRICT

The intent of the Scenic Preservation Overlay District is to prevent development from adversely affecting the scenic and historic assets of the County to the greatest degree possible. Recognizing that the unsurpassed natural beauty and historic remnants found in San Juan County are some of the County's most valuable assets and further realizing that the County and its people and economy are dependent upon visitors and their ability to enjoy such assets. To that end, the District seeks to preserve the County's natural, pristine appearance and historic sites visible from Highway 550, the Durango and Silverton Narrow Gauge Railroad, the Animas River above the Eureka townsite, the Silverton Historic District, and any other historic districts or sites in the County.

.5 MINERAL RESOURCE OVERLAY DISTRICT INTENT

The intent of this Resource Overlay District is to protect access to the mineral deposits which are known to be, or expected to be, within the district. Commercial and industrial uses, except for those related to mineral exploration and extraction, are not permitted within the Overlay District. Residential development shall be kept at a low density to avoid conflict between mining and residential uses.

.6 WATERSHED PROTECTION OVERLAY DISTRICT INTENT

The intent of this Overlay District is to protect the area needed for the protection and production of a safe public water supply. Activities and uses which create a hazard to health or a danger of pollution to the water supply of the community served by the watershed areas are prohibited.

.7 TOWN/COUNTY ZONE OF MUTUAL INTEREST OVERLAY DISTRICT INTENT

The intent of this Mutual Interest Overlay is to provide a cooperative review process for proposed development and uses in the County which are adjacent to the Town of Silverton where it is anticipated that Town streets, water, sewer, and other public services might be extended; and/or may be subject to annexation by the Town at some point in the future. Any proposed development or use within this Overlay District shall be reviewed by both the Town of Silverton and San Juan County.

## 1 – 107 USES BY RIGHT AND USES SUBJECT TO REVIEW

The uses permitted in each Zoning District correspond to the unique characteristics of that district. Some uses by right which are permitted in a Zoning District may be restricted because of the existence of an Overlay District. Some uses by right may require an Improvement or Use Permit, pursuant to Section 2 – 102 of this Code. The review and appeal process procedures are outlined in Chapter 4 of this Code.

### .1 MOUNTAIN ZONING DISTRICT USES

Within the Mountain Zone, only mining and milling, and activities which do not involve any construction or development of any sort (such as grazing, camping, picnicking, hiking, and outdoor recreation) are uses by right. All other uses and activities within the Mountain Zone are uses subject to review. Residential development of any sort within the alpine tundra ecosystem is strictly prohibited. All other development, including temporary and permanent structures, within the alpine tundra ecosystem is strongly discouraged and may be permitted only under limited circumstances when no reasonable or feasible alternative to such development is available. Ancillary uses associated with approved development at lower elevations (such as ski lift towers and other structures), necessary communication towers, and mining structures which cannot realistically be located underground are among the limited types of development which may be approved for location in the alpine tundra ecosystem. Special activities and uses as defined in Chapter 5 of this Code are subject to the review process and additional regulations described therein.

### .2 RURAL RESIDENTIAL ZONING DISTRICT USES

Within the Rural Residential Zone, only activities which do not involve any construction or development of any sort (such as camping, picnicking, hiking, and outdoor recreation) are uses by right. Other uses and activities including single-family dwellings, multiple family dwellings, and commercial businesses are uses subject to review and may be permitted within this zone. Industrial uses, including mining, milling and manufacturing are not allowed in this zone unless approved as a conditional use pursuant to Section 1-108. Special activities and uses as defined in Chapter 5 of this Code are subject to the review process and additional regulations described therein.

### .3 THE URBAN RESIDENTIAL ZONING DISTRICT USES

Within the Urban Residential Zone, only activities which do not involve any construction or development of any sort (such as camping, picnicking, hiking, and

outdoor recreation) are permitted as uses by right. Other activities including single-family dwellings, multiple-family dwellings, and limited commercial businesses are uses subject to review and may be permitted within this zone. Industrial uses, including mining, milling and manufacturing, are not be permitted in this zone unless approved as a conditional use as set forth in Section 1-108. Special activities and uses as defined in Chapter 5 of this Code are subject to the review process and additional regulations described therein.

.4 THE SCENIC PRESERVATION OVERLAY DISTRICT

Within the Scenic Preservation Overlay District, only activities which do not involve any construction or development of any sort, including disturbing of soil or trees (such as grazing, camping, picnicking, hiking, and outdoor recreation) shall be permitted as uses by right. All other uses within this zone shall be uses subject to review.

.5 PLANNED UNIT DEVELOPMENT USES

A Planned Unit Development (PUD) designation and review process may be required for any use or activity within any zoning district if the proposed activity or use is located on more than thirty-five (35) acres; or if two or more activities or uses are proposed for the same property; or if the County determines that other unique characteristics of the proposed location, activity or use require submittal and review of a PUD application.

1 – 108 CONDITIONAL USE

Certain uses which are not generally allowed within a zone may be allowed in unique circumstances, provided that under special conditions and in specific locations the use is compatible with the zoning district.

.1 All conditional-use permit applications shall be submitted to the Land Use Administrator. All applications shall be accompanied by maps, drawings, or other documentation as needed in support of the request. The granting of a conditional-use permit shall not exempt the applicant from compliance with other relevant provisions of this code.

.2 Upon determination of a completed application, the Land Use Administrator shall assist the applicant in scheduling an appearance with the Planning Commission. Such appearance shall occur no later than 40 days from the submission of the completed application.

.3 The Planning Commission shall review the application to determine if the proposed use is compatible and harmonious with neighboring uses within the zoning district. Within 5 days of the completion of the review, the Planning Commission will submit their recommendation to the Board of County Commissioners.

.4 Upon receipt of a recommendation of the Planning Commission, The Board of County Commissioners shall schedule a public hearing to be held no sooner than 7 days after notice of the hearing has been properly posted and published. Within 45 days of the receipt of the recommendation of the Planning Commission, the Board of County Commissioners shall make a decision regarding the conditional-use permit application.

.5 Any granted conditional-use permit shall expire one year after the date of approval if not exercised. A conditional-use permit shall be considered exercised when the use has been established or when a building permit has been issued and substantial construction accomplished. If such permit once exercised, is abandoned or discontinued for a period of one year, it will become null and void. A conditional-use permit may be revoked at any time if the applicant fails to comply with the conditions imposed by the Board of County Commissioners.

.6 GENERAL CONDITIONS: A request for a conditional use shall be permitted to be approved, approved with conditions or denied. Each request for a conditional use approval shall be consistent with the criteria listed below:

(a) The request is consistent with all applicable provisions of the master plan.

(b) The request shall not be unduly detrimental to surrounding properties nor infringe upon the right of residents to enjoy a peaceful occupancy of their home.

(c) The request is compatible with the existing or allowable uses of adjacent properties.

(d) The request demonstrates adequate public facilities, including roads, drainage, potable water, sanitary sewer, and fire protection exist or will exist to serve the requested use.

(e) The request demonstrates adequate provision for maintenance of the use and associated structures.

(f) The request has minimized all adverse affects on the natural environment.

(g) The request will not adversely affect the public health, safety or welfare.

(h) All processing and storage shall be conducted wholly within a building or shall be screened from view from surrounding properties.

(i) Noise, vibration, dust, odor, or other objectionable factors involved in any activity shall be confined or reduced so as to not be unduly detrimental to surrounding properties.

(j) Additional setback distances from adjoining properties may be required to mitigate any potential adverse impacts.

.1 MOUNTAIN ZONING DISTRICT STANDARDS.

(a) Size. Minimum parcel or lot area: five (5) acres.

(b) Density. 1 unit/parcel.

(c) Setbacks. Minimum setbacks: twenty (20) feet from property lines adjacent to public lands; and thirty (30) feet from property lines adjacent to private lands.

.2 RURAL RESIDENTIAL ZONING DISTRICT STANDARDS

(a) Size. Minimum parcel or lot area: five (5) acres.

(b) Density. 1 unit/parcel.

(c) Setbacks. Minimum setbacks: twenty (20) feet from property lines adjacent to public lands; and thirty (30) feet from property lines adjacent to private lands.

.3 URBAN RESIDENTIAL ZONING DISTRICT STANDARDS

(a) Size. Minimum parcel or lot area: 6,000 square feet.

(b) Setbacks. Minimum setback: ten (10) feet from the property lines. The County reserves the authority to modify these standards for those proposals where the impact of development or land use under less restrictive minimums is deemed inconsequential, or where the minimums are deemed inappropriate for the proposed use.

1-114 SCENIC PRESERVATION OVERLAY DISTRICT STANDARDS

The following general standards must be observed in planning, design and construction within the Scenic Preservation Overlay District.

.1 The District includes all sites located within 1,500 feet of the centerline of U.S. Highway 550 and/or within 1,500 feet of the centerline of the track of the Durango and Silverton Narrow Gauge Railroad and within 1,500 feet of the Alpine Loop from the Eureka townsite north to the County boundary.

.2 The site must be designed in a manner that protects the environmental assets of the area including timber, plants and wildlife, streams and drainage courses and geologic features. All site design and development must be done in a manner which minimizes impacts upon scenic views or vistas.

.3 All site design and development must be done in a manner that protects the historical assets of the area including historic structures, sites, and other cultural assets located within San Juan County.

.4 Design plans must take into account characteristics of soils, slopes and geological hazards, in a manner intended to protect the health, safety, and welfare of users of the site, and the scenic value of the site.

.5 Design of the site must include safe, convenient, and adequate arrangements for pedestrian circulation, roadways, driveways, off-road parking and loading space.

.6 Additional setbacks, landscaping, screening, or design requirements may be required by the County in order to preserve the natural, pristine appearance of the area and to minimize the visual impact to view sheds and view corridors.

## 1-115 WATERSHED PROTECTION OVERLAY DISTRICT STANDARDS

The following general standards shall be followed for the planning, design and construction of activities and uses within the Watershed Protection Overlay District:

.1 The facility must be designed in a manner that protects the purity of the water located in the watershed and preserves the area's environmental assets including soils, ground cover, plants, trees, etc..

.2 Plans shall be designed taking into account characteristics of soils, slopes and potential geological hazards, and in a manner intended to protect the health, safety, and welfare of the community.

.3 No development, use or activity will be permitted which may adversely affect the water source and the water quality for human consumption.

## 1-116 MINERAL RESOURCE OVERLAY DISTRICT STANDARDS

The following general standards shall be followed for the planning, design, and construction of activities or uses within the Mineral Resource Overlay District:

.1 This District identifies areas that contribute to the unique mineral resources of San Juan County, according to Township, Range and Section as projected on the Official Zoning and Land Use Maps, as follows:

| | | |
|---|---|---|
| T41N-R7W-S10 | T41N-R7W-S22 | T41N-R7W-S25 |
| T41N-R7W-S14 | T41N-R7W-S13 | T41N-R7W-S16 |
| T41N-R7W-S15 | T41N-R7W-S14 | T41N-R7W-S17 |

.2 The protection of mineral resources requires special attention when any non-mineral development or structure is proposed for activity or use within a designated area.

.3 Plans submitted for any Improvement Permit or Use Permit that includes any portion of a designated area shall demonstrate how access to minerals will be preserved.

.4 The activity or use shall be developed in a manner that protects the environmental assets of the area including soils, plants and wildlife, streams and drainage courses, and scenic vistas and preserves historical resources. Compliance with the State of Colorado Mined Land Reclamation Board (MLRB) reclamation requirements by a mining operator shall be deemed to indicate compliance with this section.

.5 Plans shall be designed taking into account characteristics of soils, slopes and potential geological hazards and in a manner intended to protect the health, safety, and welfare of users of the area.

.6 Design of the area shall include safe, convenient, and adequate arrangements for pedestrian circulation, roadways, driveways, off-road parking and loading space.

## 1-117 TOWN/COUNTY ZONE OF MUTUAL INTEREST OVERLAY DISTRICT STANDARDS

The Town/County Zone of Mutual Interest identifies areas which, because of their proximity to the Town of Silverton, are deemed to be a commonality of interest by both the Town and County in regards to future development.

.1 Any application for an Improvement or Use Permit within the Town/County Zone, shall be subject to the Review Process as defined in Chapter 4 of this Code.

.2 Applicants for a permit shall submit two (2) copies of the information and materials required in Section 3 – 102 of this Code, as well as any other materials specified in this Code, and any materials which the applicant feels may support the application, to the Land Use Administrator.

.3 Upon receipt of the above described submission, the Land Use Administrator shall, within fifteen (15) days, determine whether the submission is complete.

.4 Upon making the determination that the submission is complete, the Land Use Administrator shall, within three (3) days, deliver a copy of said materials to the Town of Silverton.

.5 Upon receipt of the above described submission, the Town of Silverton shall respond, within fifteen (15) days, with written comments and recommendations regarding the submission.

.6 Upon receipt of written comments and recommendations from the Town, the Land Use Administrator shall assist the applicant in scheduling their first appearance with the Planning Commission. Such appearance shall occur no later than thirty-five (35) days from the date the Land Use Administrator received written response from the Town.

76 on June 2, 1976, copies of which are filed with the Land Use Administrator.

(b) A document entitled "Avalanche Atlas, San Juan County, Colorado", prepared by Len Miller, Betsy R. Armstrong and Richard L. Armstrong, Institute of Arctic and Alpine Research, for San Juan County in 1976, published as Occasional Paper No. 17 by INSTAAR, University of Colorado, Boulder, Colorado, and approved as part of the identification of said hazards by the County Commissioners by Resolution 16-76 on June 2, 1976, copies of which are filed with the Land Use Administrator and the County Clerk and Recorder.

(c) A document entitled "Century of Struggle Against Snow: A History of Avalanche Hazard in San Juan County, Colorado", prepared by Betsy R. Armstrong, Institute of Arctic and Alpine Research, for San Juan County in 1976, published as Occasional Paper No. 18 by INSTAAR, University of Colorado, and approved as part of the identification of said hazards by the County Commissioners by Resolution 16-76 on June 2, 1976, copies of which are filed with the Land Use Administrator.

(d) A series of maps entitled "Overall Hazard Map", prepared by INSTAAR for San Juan County in 1976, involving and including all, or part, of eleven USGS 1:24,000 topographic quadrangle maps within San Juan County, copies of which are filed with the Land Use Administrator.

## 8 – 104 PROCEDURES

Applicants for an Improvement Permit are required to obtain clearance from the Land Use Administrator regarding avalanche hazards prior to the issuance of an Improvement Permit. The procedures to be used in the granting, or denial, of this clearance shall be as follows:

.1 Upon receipt of the information required by Section 3-102, the Land Use Administrator shall determine the avalanche hazard relative to the property in question by consultation of the maps specified in 8-103.1. The Land Use Administrator may, at his discretion, conduct an on-site inspection of the property.

.2 At the completion of the consultation, the Land Use Administrator may do one of the following:

(a) Find that the property in question is not adversely affected by any avalanche hazard, and that special impact analysis for avalanche hazards does not apply.

(b) Find that avalanche hazards may affect the property or the improvement in question, but that plans of the applicant include sufficient mitigating techniques or elements to allow the use or improvement to proceed.

(i) In such a case, clearance shall be subject to conditions specified, in writing, to the applicant by the Land Use Administrator.

(ii) In such a case, clearance can be given by the Land Use Administrator only after approval has been given by the Building Inspector, based upon the provisions of the Uniform Building Code as amended, to the plans submitted in accordance with Section 3-102 of this Code.

(c) Find that impact cannot be sufficiently determined without further study of the property, or the avalanche hazard involved, by the Planning Commission, with final decision to be made by the County Commissioners.

(i) In such a case, the Land Use Administrator shall require the applicant to utilize the Review and Appeal Process detailed in Chapter 4 of this Code, as specifically authorized in 4-102.1 (b).

(ii) In such a case, the Planning Commission shall be required to consult and seek the written recommendation of the San Juan Avalanche Board. The Planning Commission shall supply the Avalanche Board with copies of material presented by the applicant and the County Commissioners, and the Avalanche Board shall respond to the Planning Commission with recommendations and findings, in writing, prior to the public hearing called for in 4-106.4 of this Code. The Avalanche Board shall be empowered to make recommendations regarding avalanche hazard and/or the need for, or adequacy of, avalanche defenses or other mitigating techniques.

(iii) In such a case, the Land Use Administrator shall require the applicant to meet additional submission requirements as listed in 8-105 below.

(d) Deny avalanche hazard impact clearance based upon the provisions of this chapter.

.3 If the San Juan Avalanche Board is convened, the Land Use Administrator shall require the applicant to pay a fee to cover the administrative costs of conducting the study and evaluation, the amount of such fee to be determined by resolution of the Board of County Commissioners.

## 8 – 105 ADDITIONAL SUBMISSION REQUIREMENTS

Applicants for an Improvement Permit shall be required to submit additional materials beyond those specified in 3-102 of this Code under certain circumstances.

.1 Additional materials shall be submitted to the Board of County Commissioners by applicants who:

(a) Are required by the Land Use Administrator to utilize the Review and Appeal Process under 8-104.2 (c).

(b) Seek a variance to any provision of this chapter.

(c) Wish to appeal an administrative decision made under the provisions of this chapter.

.2 The additional materials for any of the cases above shall consist of at least four (4) copies of:

(a) A vicinity map, showing the location of the property in question, portrayed on the appropriate USGS 1:24,000 quadrangle map.

(b) A topographic map, or maps, at a scale no less detailed than 1"=500' and with contour intervals of 10' or smaller, showing the location, nature, and density of the proposed improvement.

(c) A narrative or graphic report detailing the following information or data:

(i) Location of existing and proposed structures.

(ii) Location of proposed areas of concentrated activity, including roads, parking areas, storage areas, and recreation sites.

(iii) Avalanche frequency.

(iv) Avalanche flow depth.

(v) The areal extent of the runout zone.

(vi) Location and description of any, and all, proposed avalanche defense structures, or other mitigating devices or techniques.

(vii) Design stress loads of any structure, as certified by a registered professional engineer.

(viii) Statement explaining why the avalanche hazard area could not be avoided completely in the improvement plans.

.3 Unless otherwise specified, the following map standards shall be adhered to in this chapter.

(a) Maps will be in compliance with national map accuracy standards as promulgated by the US Bureau of Budget.

(b) All maps shall show a true north arrow and shall show the monumented corners of the property in question as required by 3-102.6(a) of this Code.

(c) One of the four copies of each map shall be in reproducible form, ie: mylar, sepia, or clear film positive.

.4 All engineering work prepared under this chapter shall be prepared by, or under the direction of, and signed by, a registered professional engineer.

.5 The County Commissioners may waive any part, but not all, of the submission requirements imposed by this chapter upon the written petition of the applicant that full compliance with the submission requirements would be an unreasonable burden for the applicant and that the proposed improvement will have an insubstantial impact on the surrounding area.

## 8 – 106 CRITERIA FOR CLEARANCE

An applicant for an Improvement Permit shall be given avalanche hazard clearance only if all of the following are met:

.1 The requirements of Chapter 8 have been complied with.

.2 Provision has been made for the long-term protection of the public from avalanche hazards.

.3 The proposed improvement will not impose a financial burden upon residents of the area or upon the County.

.4 The proposed improvement will not intensify the hazard for avalanche.

.5 The improvement is engineered and will be constructed in a manner that will minimize hazards to public health and safety, or to property, due to avalanche.

.6 Structures designed for human habitation or occupancy will not be located in any established avalanche area.

.7 Areas of concentrated human winter activity will be protected by properly designed arresting or diverting structures, or other effective mitigating techniques.

.8 Provision is made for disclosure, prior to sales, of all avalanche hazards and mitigation procedures undertaken, and for attaching a delineation and description of the avalanche hazard and mitigation measures to all deeds, titles and recorded documents involving a transfer of ownership of the property, or any part of said property.

.9 Open space uses are incorporated into the improvement plan to the greatest practicable extent, in addition to, rather than in place of, other mitigation procedures.

## 8 – 107 LIMITATIONS OF AVALANCHE MAPS

.1 Maps and documents referred to in this chapter are not intended to serve as a forecast of all possible avalanche activity within the areas depicted, and should not be relied upon as such by the public. Neither San Juan County, nor any of its agents, employees, or appointed boards, can assume responsibility for unforeseen effects of extraordinary winter storms, changes in climate, destruction or alteration

does not detract from the scenic quality of adjacent public lands, existing trails or historic resources.

(c) Include evidence to demonstrate that the site improvements are designed and/or oriented in ways that allow them to blend in with and utilize the natural topography and vegetation. The report shall include, but not limited to, site photos, perspective sketches, photo-simulations and/or three-dimensional models at an appropriate scale.

(d) Provide written descriptions and photos of the proposed building materials, colors and textures. Utilizing and integrating elements, colors and textures found naturally in the landscape are strongly encouraged while use of reflective materials, such as highly reflective glass or metals is prohibited.

(e) Describe any plans to remove and store topsoil on-site, prior to any grading or excavation, and how it will be replaced and reused for re-grading and re-vegetation purposes.

(f) Provide a written description and plans that illustrate how the proposed development has been integrated into the landscape and that site disturbance and grading have been minimized. Roads, structures and other improvements shall bear a logical relationship to existing topography, vegetation and other site features.

(g) Show how utilities will be located and installed in ways that will minimize impacts to the view shed and natural environment.

.20 Square Footage Limitations

(a) All residential development located at or above 11,000 feet and below the alpine/tundra zone shall be limited to a maximum floor area of up to one thousand (1,000) square feet. Residential development of any sort within the alpine tundra ecosystem is strictly prohibited. All other development, including temporary and permanent structures, within the alpine tundra ecosystem is strongly discouraged and may be permitted only under limited circumstances when no reasonable or feasible alternative to such development is available. Ancillary uses associated with approved development at lower elevations (such as ski lift towers and other structures), necessary communication towers, and mining structures which cannot realistically be located underground are among the limited types of development which may be approved for location in the alpine tundra ecosystem. The source of elevation

shall be based on the 1927 North American Vertical Datum 10,000-foot grid based on Colorado coordinate system, south zone.

The following elements are excluded from the Floor Area calculation:

(1) Porches, decks, and terraces that do not have roofs or floors above and are open to the sky:

i. If such improvement is equal to or less thirty (30) inches above grade and is two hundred fifty (250) square feet or less;

ii. If such improvement is more than thirty (30) inches above grade or greater than two hundred fifty (250) square feet, then it is calculated as Floor Area at fifty percent (50%) of the actual area.

(2) A single-story, detached accessory building, no greater than 200 square feet.

(3) Structures associated with mining activities are exempt from Square Footage Limitations (Section 4-110.20).

.21 Density and Use Limitations

(1) All Improvement Permits for single-family residential development, if approved, shall allow a maximum of one (1) unit/parcel.

(2) All Improvement Permits for single-family residential buildings, if approved, shall be limited to private, personal, residential use.

(3) Use of single-family residential buildings for Vacation Rental/commercial use shall require approval of a separate Use Permit and require that all services and capacities be evaluated at the maximum possible occupancy, intensity and duration of use to ensure there are adequate services and capacities to accommodate the increased demand for potable water, wastewater facilities, trash, satellite or cell phone service, emergency access and parking.

# San Miguel County Regulations

## 5-321 High Country Area (HCA)

5-321 A. Purpose

I. The High County Area (HCA) Zone District is intended to protect and preserve the alpine, sub-alpine and scenic hillsides in the upper San Miguel watershed for their historic and natural landscapes and retain the relatively undeveloped character of these backcountry areas. It is the intent of this Zone district to preserve historical structures and to protect the native flora and fauna. This Zone District is comprised of public lands managed by the United States Forest Service (USFS) and patented mining claims. Much of this Zone District was once mined and may again be mined. It is the intent of this Zone District to preserve and protect public lands from the impacts of incompatible development and to protect access to the minerals that are known to be or expected to be within this Zone District. Commercial and industrial uses are not permitted within the Zone District. The size, scale, and location of Single-family Dwellings and Accessory Structures are limited to avoid conflict with past and/or future mining. The County favors preservation and protection for open space, public recreation and watershed and source water protection over the use of these properties for any development purpose.

II. These areas are typified by a lack of improved or maintained roads, little or no utilities or infrastructure and very limited or sparse development other than historic mining remnants from past mining activities. Development activities in these areas should be limited due to high elevation, environmentally sensitive and geologically hazardous areas, steep terrain, limited access, mining remnants, and other site constraints. If residential development occurs it should be limited to cabins and small scale residential development consistent with the type of development that historically occurred in the area. Development that results in a demand for public services beyond what is currently provided should be prohibited.

III. It is the intent of this Zone District to prohibit both public or private improvements on existing public roads and to prohibit the construction of new roads within the HCA Zone District as a means of maintaining the areas existing character and as a means of preserving historic access methods. Existing private roads within the HCA Zone District are considered to be pre-existing driveways. Driveways may be constructed or improved to access property within this Zone District. However, property owners are not required to improve driveways accessing their property in this Zone District to the driveway standards that are required throughout the remainder of the County. Rather, the intent of this Zone District is to minimize the number of driveways and the impacts driveways may have on the scenic and environmental character of the HCA Zone District.

5-321 B. Review of Allowed Uses

At a minimum, any Allowed Use is subject to an Administrative Review. The purpose of the County Planning Department Administrative Review is to provide staff an opportunity to work with the owner or developer to consolidate and minimize the impacts associated with the development of dwellings, driveways or improvements, to ensure that the proposed development is consistent with the goals and objectives of the Telluride/Ophir High Country Area Sections of the Master Plan and to avoid hazards from past mining or conflicts with potential future mining. As a part of an Administrative Review the Planning Director shall consider all relevant information and /or analysis provided by Referral Agencies concerning the potential impacts of the development proposal and may require the applicant to comply with any and all review comments deemed necessary to mitigate impacts and secure the objectives of the HCA Zone District.

5-321 C. Administrative and Land Use Approvals

I. All applications for Administrative Review or land use approvals shall include, at a minimum, the information and materials specified in Land Use Code Section 4-2 and/or as follows:

a. If the certificate of title indicates that the mineral estate and surface estate have been severed; the applicant shall, as a part of the applicant's submittal for Administrative Review, send written notice of an application for approval of a development proposal to the owners of record of the severed mineral estate consistent with LUC Section 3-903.

b. Written notice of an application for Administrative Review shall be sent to the owners of properties located adjacent to the property subject to the application and notice of the application shall be posted in a conspicuous place on the subject property.

c. The mailing of the written notice and posting of the property shall be made by the applicant, within five (5) days of submitting the application. The notice shall inform the owners of severed mineral estates and/or adjacent property owners that they have thirty (30) days from the time the notice is postmarked to notify the Planning Director in writing of any issue or objection to the proposed development.

II. Referral Agencies

The application shall be referred to the State of Colorado's Division of Minerals and Geology and the State Water Quality Control Division and will be referred to the Towns of Telluride, Mountain Village or Ophir or

the County Historical Commission, the Telluride Fire District, or other referral agencies, as deemed appropriate by the Planning Department staff to determine compliance with the Land Use Code.

III. The following must be addressed as part of any application:

A site plan including:

a. The location of all existing and proposed improvements on the property including the access to the property and driveway, if any;

b. The size, height, number of stories and basic design of the structure(s) and including the type of materials to be used in construction;

c. Information regarding all existing or proposed utilities or services that may or will serve the property, including the type and layout of the water supply and sewage treatment system;

d. The location of any and all existing mines, mine remnants, mine adits or mine waste located on the property to be developed;

e. The location of any and all historic buildings or structures or cultural resources located on the property to be developed.

f. Identification of Areas of State and Local Interest (1041 Environmental Hazard) as set forth in Section 5-4 and Wetland Areas as set forth in Section 5-22 and Watershed Protection Areas as set forth in Section 5-25, for all areas where development activity is proposed;

g. The location of existing roads and Trails on the property to be developed.

IV. Scenic Quality Report

An applicant shall submit a site plan and Scenic Quality Report showing how the siting, design, materials and construction of any and all structures including the driveway will minimize the visual impact of the development on the scenic quality of the HCA Zone District, the Towns of Telluride, Mountain Village and Ophir, the Ski Area, mountain passes, major historic roads, public use areas and neighboring properties.

V. The owner of a patented mining claim must submit a Mining Resource Report that addresses the following:

a. Demonstrate compliance with all applicable state and federal requirements, if any, for reclamation, stabilization, bonding, storm water drainage and any other requirements that are deemed necessary by the State of Colorado's Division of Minerals and Geology and/or Water Quality Control Division to protect the public health, safety and welfare of the owner, occupants and neighbors of the property where the development is to occur.

b. Provide a written report, stamped and sealed by a qualified Colorado registered professional engineer, knowledgeable of mining and mining hazards, identifying any and all surface or sub-surface mining related hazards on the entire claim where the development is proposed. If mining related hazards are identified, the engineer's report shall include recommended measures to adequately mitigate such surface or sub-surface mining related hazards.

VI. Liability and Disclosure

The owner shall execute a release of liability prepared by the County waiving any and all claims against the County for issuing a building permit on a mining claim that has been mined in the past and may be mined in the future. The release of liability and disclosure, to be executed by the owner, shall also acknowledge that there is no guarantee of fire response or emergency services to properties in the High Country Zone District.

VII. Merger of Surface and Mineral Estates

Where the applicant is the owner of both the surface and mineral estate on the property on which the development is proposed, as a condition of Administrative Review and a Development Permit, the owner shall execute a "merger covenant," or deed restriction prepared by the County to be recorded in the chain of title for the property, that provides for the merger of the surface and mineral estate in perpetuity so these estates cannot be severed into separate estates by the current owner, and/or his heirs, successors or assigns.

5-321 D. Standards for all Administrative Reviews and All Special Uses Requiring One-Step and Two-step Review

I. All uses shall be:

a. Consistent with the Goals and Objectives of the Telluride/Ophir High County Area Sections of the Master Plan.

b. Consistent with the County Land Use Policies in Article 2.

c. Consistent with the purpose of the HCA Zone District.

d. Located, designed and operated to minimize visual impacts so as not to detract from the scenic quality of the HCA Zone District, the Towns of Telluride, Mountain Village and Ophir, the Ski Area and public use areas.

e. In compliance with Section 5-4 Areas and Activities of Local and State Interest/'1041" Environmental Hazard Review including the Section 5-407A. General Standards for Wildlife Habitat Areas, Section 5-2203 Development in Wetland Areas, and Section 5-25 Watershed Protection Areas. If a conflict exists between the requirements of the above referenced Land Use Code provisions and the standards of the HCA Zone District, the most restrictive provisions shall apply.

f. Located and proposed to avoid hazards from past mining or conflicts with potential future mining and include those measures recommended in the Mining Resources Report necessary to adequately mitigate surface or sub-surface mining related hazards.

g. Compatible with and minimize adverse impacts on the surrounding area.

h. Designed, located and proposed to be operated so that the public health, safety and welfare will be protected.

II. All Uses are subject to the following Standards:

a. Outdoor lighting shall be limited to the minimum required to comply with the applicable provisions of the Uniform Building Code and National Electric Code. All required exterior lighting shall be fully shielded and directed toward either the ground or the surface of the building to prevent direct visibility off-site. High intensity sodium vapor, mercury vapor, and similar lighting is prohibited.

b. All areas of surface disturbance, excluding the travel surface of driveways, shall be re-vegetated with species native to the site and/or surrounding area. Removed topsoil shall be replaced and only species native to the site and/or surrounding area may be planted. The property owner shall control and remove all noxious and invasive plant species on the property or introduced as a result of development in accordance with the Colorado Noxious Weed

Management Act. The property owner shall also control and remove all plant species on the site that are not native to the HCA.

c. Fuel tanks, water storage units and generators shall be located within a permitted structure or placed underground. If generators or similar devices are to be used sound levels of generator noise radiating from a property line at a distance of twenty-five feet or more shall not exceed 50 dba.

d. Demolition of national, state or locally certified County Historic Landmarks is prohibited.

5-321 E. Uses Allowed Subject to Administrative Review

I. Single-family residential dwellings with less than 1,000 square feet of Floor Area.

a. An additional 500 square feet of Floor Area may be allowed for each Development Right retired in perpetuity on a developable parcel(s) within the HCA Zone District. A developable parcel is a property capable of meeting all applicable provisions of the Land Use Code necessary to obtain a Development Permit for a Single-family dwelling.

b. An additional 500 square feet of Floor Area may be allowed where the owner is proposing measures that preserve or enhance public recreation opportunities and/or provides an easement for public non-motorized access through their property consistent with the County Trails Master Plan.

c. An additional 500 square feet of Floor Area may be allowed where the owner does not construct a driveway to serve the property. This provision does not prohibit use of a temporary driveway during construction, if the use is discontinued, the driveway is restored to its natural condition, and the property is restricted in perpetuity against construction of any future driveway.

d. An additional 300 square feet may be allowed for an attached garage within or as a part of the single-family residential dwelling if there is no detached accessory structure. A garage as defined in Article 6, and as limited herein, is not included in the calculation of Floor Area

e. An additional 500 square feet may be allowed for a Basement within or as a part of the single-family residential dwelling, if the development is located and designed so that the residence would

not be visible, during summer months, from the towns of Telluride, Ophir and Mountain Village, or public roads, public trails and public use areas within the High Country Master Plan Area. If a Basement is proposed as a part of the development it is incumbent on the applicant to demonstrate this improvement can be made in a manner consistent with the HCA Master Plan and the land use standards for the HCA Zone District and Watershed Protection Areas. (such as, limiting site disturbance, avoiding or minimizing blasting, handling of excavated materials, surface drainage, etc.)

f. In no circumstance shall a single-family residential dwelling, with a Floor Area larger than 2,500 square feet be allowed by Administrative Review.

II. One detached Accessory Structure (shed) with 200 square feet of Floor Area or less if there is no attached garage. Where gasoline/diesel powered/electric generators are used they shall be placed in the garage, accessory shed or underground to minimize noise impacts.

III. Electric Distribution Lines & Electric Service Lines.
Electric Distribution Lines are prohibited except under the following limited and specific circumstances:

a. There is an existing Electric Distribution line located on the parcel or mining claim where a Single-family residence is proposed to be developed and the applicant has obtained Administrative or Special Use Approval for a specific Single-family residential development; and
b. The proposed Single-family residence is to be served by an alternative energy source(s), including but not limited to solar, photovoltaic, wind, hydropower or other alternatives, that provides a substantial amount, at least 50%, of the projected power usage for the single-family residence, the alternative energy source is tied to the electrical grid system by an Electric Distribution Line or Electric Service Line and there is an approved net-metering agreement with the providing utility company; and
c. The Electric Distribution Line or Electric Service Line shall be placed underground where it has been determined that such undergrounding would not have significant adverse environmental impacts. Above-ground Electric Distribution Lines are prohibited; and
d. The maximum allowed length of the proposed extension of the Electric Distribution Line shall not be greater than one-quarter mile in length from the existing utility service line to the proposed Single-family residence. If possible the buried Electric Distribution Line or Electric Service Line should be placed within or alongside an existing access

road or the proposed driveway unless there is a more practical route that would result in less environmental impact to the property.

e. Underground Electric Service Lines are allowed in the HCA Zone District subject to Administrative Review pursuant to LUC Section 5-321 B.

f. Property Owners should realize that for most High Country Area properties solar, wind, hydropower, or other alternatives to the extension of an Electric Distribution Line or Electric Service Line might be the only electric service available.

IV. Development or improvement of driveways and recreational Trails.

a. Driveways do not have to comply with the driveway standards contained in Land Use Code Section 5-502 DD. because these private driveways are not intended to provide emergency vehicle access to single-family residential dwellings. The standards for driveways in the HCA Zone District are identified in Land Use Code Section 5-321 N. II. Driveways.

b. Trails do not have to comply with the standards contained in Land Use Code Section 5-506 Trails. The design standards for Trails in the HCA Zone District are to be determined by the Planning Department in consultation with the San Miguel Trail Council and shall be consistent with the goals and objectives of the Telluride/Ophir High Country Area Sections of the Master Plan.

c. Helicopter Access may be allowed by Administrative Review for limited construction activities where it has been determined by clear and convincing evidence that the benefits of such access outweigh the detriments. Helicopter Access is not allowed under any other circumstances except for bona fide emergencies.

5-321 F. Uses Allowed Subject to One-step Planning Commission Review subject to Section 5-10

Public recreational structures and outdoor recreational areas, such as backcountry/ski shelters, picnic areas, educational centers, limited to 500 square feet. Such uses shall be consistent with the purpose and definition of Active Open Space in Article 6.

5-321 G. Uses Allowed Subject to One-step Board of County Commissioner Review subject to Section 5-10.

I. Open Land Protection, subject to the standards in Section 5-1207 and the standards of the HCA Zone District.

II. Driveways greater than one-quarter (1/4) mile and/or driveways with vehicle pullouts. A distance of one-quarter (1/4) mile was established based on a finding that the extension of further development decreases the integrity of the environment, and diminishes the historic and rural landscape.

In approving driveways greater than one-quarter (1/4) mile and/or driveways with pullouts, the Board of Commissioners shall consider visibility of the roads/driveways from all public roads in the High Country Master Plan Area, to include Tomboy Road, Imogene Pass, Black Bear Pass, Bear Creek Road, Liberty Bell Road, Boomerang Road, Gold King Basin Road, upper and lower Bridal Veil Roads, Blue Lake Road, Marshall Basin, Blix Road, Waterfall Canyon Road, Alta Lakes (east) and Ophir Pass, Lewis Mill, the Towns of Telluride, Mountain Village and Ophir, impact on recreational activities, and environmental impacts, including soil disturbance and erosion. Where access requires a driveway greater than one-quarter (1/4) mile in length alternative access should be considered (including, but not limited to, skiing, hiking, snowmobiling).

III. Automobile parking areas that centralize parking adjacent to existing roadways in order to allow alternative access beyond that point.

IV. Repair or restoration of damage to existing public roads, as a result of natural catastrophes or "acts of God", that exceed routine Road Maintenance but do not constitute Road Improvements. In approving repair or restoration of existing public roads the Board of Commissioners shall consider if the proposed road repair adequately addresses public safety in a manner that does not change or alter the rough condition or historic character of the road. Board of County Commissioner review is not required for expedient repairs to provide for public safety in bona fide emergencies (such as the removal of material from rock slides) as determined by the San Miguel County Road Superintendent.

V. Logging activities resulting in cutting down trees for use on-site and /or the hauling of up to 5,000 board feet of timber in any 12 month period beginning with the commencement of tree cutting. In approving logging activities the Board of Commissioners shall consider the availability of access from existing roads, the method of access, the potential impacts to public roads and any required mitigation thereto, and the visual impacts of such activities on the scenic quality of the property and the surrounding area. The BOCC may also consider whether the proposed activities are consistent with a forest management plan that is intended to promote forest health and reduce the risk of wildfire. It is not the intent of this section to allow commercial logging operations, or activities that encourage the construction of new roads or involve the use of heavy construction equipment in the HCA.

5-321 H. Uses Allowed Subject to Two-step Special Use Permit Review Subject to Section 5-10.

I. Single-family residential dwellings with greater than 2,500 square feet of Floor Area or single-family residential dwellings and Accessory Structures that exceed the square footages that may be authorized by Administrative Review pursuant to Land Use Code Section 5-321 E. To authorize a larger Floor Area for a Single-family Dwelling or Accessory Structure, there must be a finding that the proposed development furthers the goals and objectives of the Telluride/Ophir High Country Area Sections of the Master Plan, shall include the retirement of additional Development Rights in a manner that results in less developed square footage than what may be authorized through an Administrative Review, is located so it does not create a visual impact or detract from the scenic quality of the basin or area in which it is located, and is in the public interest.

II. Commencement and/or expansion of mining and mineral processing operation, or development of mining related structures or buildings, in accordance with all provisions of Section 5-10 and 5-16. This does not include sand and gravel mining or processing.

III. Radio, microwave transmitting stations and other antennae subject to Section 5-307 K. and wind turbines for residential use over 25 feet in height.

IV. Public utility structures, including dams, reservoirs and municipal water distribution systems (refer to Section 5-709.).

5-321 I. Area Bulk Requirements

I. The minimum lot size for each principal use is 35 acres except for single-family residential dwellings approved pursuant to the subdivision exemption standards for Open Land Protection (see Section 5-1207).

II. Any legally created parcel less than 35 acres in the HCA Zone District may qualify for a Building Permit for one single-family residential dwelling Unit, provided the parcel satisfies the criteria set forth in Section 5-1908 Sub-standard size parcels, except for the standards for driveways in Section 5-502 DD.

5-321 J. Minimum Setbacks

The preferred setbacks for all yards adjacent to Public Lands are 30 foot front and 20 foot side and rear. The minimum setback for all yards is 10 feet, except the 10 foot minimum setback may be further reduced by Administrative Review where the applicant has demonstrated there would be no negative impact to the adjoining

property. The intent of allowing a reduced setback is to provide maximum flexibility in siting the single-family residential dwelling and accessory structure to reduce visibility and impacts on scenic quality. The location of structures, setbacks and separation requirements for residences, mines, mine tailings, wells and septic systems, if any, will be determined during the site-specific review of the proposed development.

5-321 K. Maximum Height of Buildings

The maximum height of buildings is 20 feet for single-family residential dwelling and 16 feet for an attached Garage or 12 feet for a detached Accessory Structure: The ridge of a gable, hip, gambrel or similar pitched roof may extend up to five feet above the specified maximum height limitation. (see Height as defined in Article 6 of the LUC.)

5-321 L. Minimum Off-street Parking

All parking shall be provided on-site where vehicle access is available.

5-321 M. Water and Sewage Disposal

An adequate water supply (which may include a cistern or storage tank) and a sewage disposal system that minimizes site disturbance and complies with the State and County Sewage Disposal System requirements must be demonstrated. Depending on site conditions, the County Environmental Health Department may require an engineered system. Applicants are encouraged to meet with the Environmental Health Department to identify the type of sewage disposal system that may be best suited for the Development proposed and that minimizes site disturbance.

5-321 N. Development or Improvement of Roads, Driveways, and Recreational Trails

I. New Public Roads, Existing Private Roads, and Road Improvements

New public roads and Road Improvements to existing public roads are prohibited. This provision is not intended to prohibit Road Maintenance as defined in Article 6 of the Land Use Code. Existing private roads within the HCA Zone District are considered to be pre-existing driveways and may be improved and maintained in the same manner as driveways.

II. Driveways

New driveways shall have minimal visibility as may be viewed from the Towns of Telluride, Mountain Village or Ophir, the Ski Area and all public roads in the High Country Master Plan Area. Construction of new driveways shall be allowed only if there is no existing access determined

to be adequate by the County Road and Bridge Department or County Engineer. Landowners are required to obtain a County access permit to construct driveways off of County roads, however landowners are not required to construct driveways to County standards as required in Section 5-502 DD., except that:

a. Driveways shall be no wider than 10 feet; but vehicle pullouts may be allowed where deemed necessary for public safety.

b. Switchbacks and cuts and fills are minimized for roads and driveways to the fullest extent possible;

c. Blasting shall be limited to the least extent reasonably necessary in the development of a driveway;

d. Driveways are not limited to a specified grade. Owners are solely responsible for creating safe vehicular access to their property;

e. Driveways may not be paved or improved with an impervious surface;

f. Driveways greater than one-quarter (1/4) mile or driveways with vehicle pullouts must be approved subject to One-step Board of Commissioners Review; and

g. Driveways may serve multiple Single-family Residences, if and where it has been determined by clear and convincing evidence that doing so would reduce the potential number of driveways and would minimize the overall aesthetic and environmental impacts consistent with goals and objectives of the Telluride/Ophir High Country Area Sections of Master Plan.

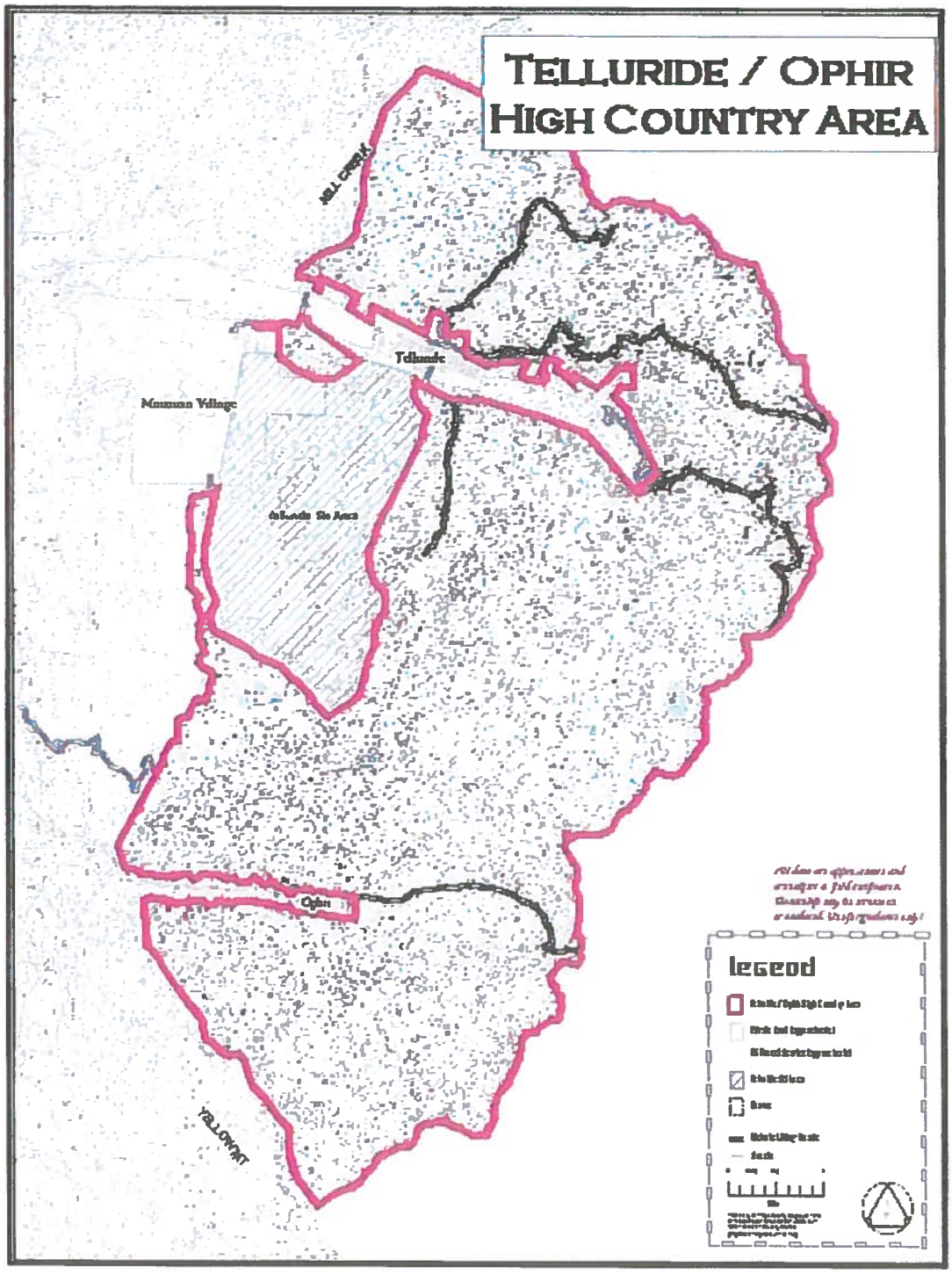
III. Public Trails/Recreational Access

a. Public access to Trails from existing public roads, as identified in the adopted County Trails Master Plan or as identified during the administrative review process, should be maintained or enhanced to the maximum extent possible for both summer and winter use. The County shall work cooperatively with landowners in the HCA Zone District to ensure that through-access on such roads is maintained.

b. Trails shall be kept in their historic alignments to the greatest extent possible. Road and driveway crossings of Trails shall be avoided wherever possible.

High Country Area Roads

| Road | Status | Description | Comments |
|---|---|---|---|
| Alta Lakes | County Maintained | Boomerang Road east to Alta Lakes | Public |
| Bear Creek | Non-County Maintained | Telluride City Limits south 2.14 miles | Public |
| Blix Road | Non-County Maintained | Ophir Pass Road north to NE1/4, NW1/4, Section 18, 42N, 8W (La Junta Basin) | Probably public – needs research |
| Bridal Veil (lower) | County Maintained | Beginning .22 miles east of the Valley View Parking Area on CR K69 heading east to the intersection of Upper Bridal Veil Road & Black Bear Pass Road at Bridal Veil Falls | Public |
| Bridal Veil (upper) | Non-County Maintained | Black Bear Pass Rd. south to Blix Road | Probably public – needs research |
| Black Bear Pass | County Maintained | Bridal Veil Intersection to County line | Public |
| Blue Lake Road | Non-County Maintained | Upper Bridal veil Road southeast to Blue Lake | Probably public-needs research |
| Boomerang | County Maintained | Alta mine site north to Prospect Intersection | Public |
| Gold King Basin | Non-County Maintained | Alta Road southeast to NW1/4, NE ¼, Sec. 27, 42N, 9W | Public |
| Lewis Mill | Non-County Maintained | Upper Liberty Bell Road to Lewis Mill Site | Probably public -needs research |
| Liberty Bell | Non-County Maintained May be maintained by Town of Telluride to Water Plant | Tomboy Road north to SW1/4, NE1/4, Sec. 30, 43N, 8W | Probably public – needs research |
| Marshall Basin | Non-County Maintained | Tomboy Road northwest to NW1/4, SE1/4 Section 29, 43N, 8W | Probably public – needs research |
| Ophir Pass Road | County Maintained | Ophir City Limits east to County Line | Public |
| Tomboy Road | County Maintained | Telluride city limit east to County Line | Public |
| Waterfall Canyon | Non-County Maintained | Ophir City Limits south through National Forest land to private property | National Forest-Public |


TELLURIDE / OPHIR
HIGH COUNTRY AREA
Telluride
Mountain Village
Ophir
YELLOW PINE
legend

MINUTES

# OURAY COUNTY PLANNING COMMISSION

PUBLIC HEARING

Meeting held at the Ouray County Land Use Office

111 Mall Road, Ridgway, Colorado

June 18, 2009 – 6:30 to 9:15 PM

**Abbreviations:**

| | |
|---|---|
| BOCC | *Board of County Commissioners* |
| PC | *Ouray County Planning Commission* |
| RAJPB | *Ridgway Area Joint Planning Board* |
| OAJPB | *Ouray Area Joint Planning Board* |
| M/S/P | *Motion made, seconded, passed* |
| MOP | *Member of Public* |

**Please Note:**

Written minutes are considered "enhanced action only" and do not represent all comments made during the meeting or public hearing. Comments are paraphrased and summarized and will not be exact quotes from Planning Commission, Staff, or the Public. Copies of the recorded meeting are available at the Land Use Office on CD ROM for $5.00

*Items listed in **RED** are motions that passed. *Items listed in **BLUE** are action items for Staff.

**Attending:**

| | |
|---|---|
| Planning Commission: | Collin, Lipton, Cockle, Luttrell, Ingo |
| Recused: | Howe |
| County Staff: | Deganhart, Castrodale |
| County Temp: | Husch |

**PROPOSED CHANGES TO LAND USE CODE AFFECTING RESIDENTIAL DEVELOPMENT ON MINING CLAIMS AND OTHER PARCELS IN THE SOUTHERN END OF OURAY COUNTY**

6:39 **Call To Order – Public Hearing**

- Castrodale – Noted that a copy of a faxed comment just received from Lance Barker was included in the commissioner's packets.
- Deganhart – Noted that the copy we are working with tonight is the "June 3/Final" version which incorporates all notes from last workshop. This is the end product of a process that has been going on for well over 1 ½ years, and that there have been at least 6 if not more PC work sessions on these regulations. The PC also has (not to be discussed this evening) a draft for a future work session, changes to Section 3 to add the new zone, and Section 19.2 to address certain items related to Site Development Permits.
- Collin – Opened the hearing for public comment. Noted there were many more people here tonight than all of the workshops put together. Asked for comments to be directed to

PC and for all speakers to stand and introduce themselves and then give their comments. Copies of the South Alpine Zone proposed regulations and maps were made available for members of the public to review. Will try not to be too strict on time, but may either ask to wrap things up if we begin to hear the same thing over and over again. Wants everyone to have a chance to speak once before anyone speaks a second time.

6:47 PM PUBLIC COMMENT

1. David Conrad – 5th generation (part-time) resident. Our land in Ouray is homestead and our heritage. This legislation usurps rights of private landowners. It's very broad and very damaging.
2. Howard Greene – 2-part comments: 1) gave history & justification of new zone; appreciates proposed regulations, would like to see time spent suggesting desired modifications and not attempt to stop the proposal altogether; 2) Special Use Permits should not be used in this zone – counterproductive to the intent & contrary to the goals of this zone. (submitted written copy of comments & asked to forward to BOCC)
3. Dave Calhoon – 60 year resident, owns several mining claims, opposed to Section 30 as written – read 3 page statement as to why, including that the mining industry is the reason Ouray and Ridgway are here in the 1st place. Feels proposal needs more review as to how this will affect property owners & property values, and should include the comments from this hearing. Gave comparison of taxes collected on agricultural land, mining claims, and residential land. Changes must include entire Alpine Zone above 7,800 ft elevation. Asked that proceeding be tabled for further review. (submitted written copy of comments)
4. Jon Esty – Feels the PC has done a pretty fair job trying to strike a balance between property rights and preservation of environment & scenic areas. Feels the 12%-15% road grade seems reasonable. Summit County has similar regulations & Pitkin County has a case-by-case policy. Agrees with Sec. 30.6 C guaranteeing public access, and with the small scale renewable energy systems – feels that's a positive idea.
5. Tom McKenney – Thinks the development standards of 7,500 sq ft seems excessive by Ouray County & even Telluride standards, and is large relative to the purpose and intent of the legislation you are trying to master right now.
6. Ron Williams, Jr. – born & raised in Ouray and is a mining company. The 12% does not make sense. Believes miners have enough regulations governing them already, and if they don't abide they go to jail. Anything more impeding mining in this county is crazy, mining companies reclaim everything. Collin clarified that these apply only to housing and not to mining activities. Ingo asked what grade he sees as reasonable for road grade. Williams said, "Whatever you're brave enough to drive up & down", and that steeper roads mean less disturbance.
7. Bob Larson – Owns patented mining property. Has issues with the arbitrary number of 12%-15% grade, many roads in the town of Ouray are steeper than that. Asked for clarification on several sections including whether the rules would apply to exploration for mining. Already has permits that must be filed with state, this may conflict. Opposed to South Alpine Zone in this fashion. Does not want to prevent development of resources. Most residents and miners are concerned about environment, not here to tear up land, but to use the resources in best possible way. Also, 8th Ave. in Ouray is an 18% grade.
8. Michael Covington – Owns mining claims in Dexter Creek area. Opposes proposed section. Road grade is biggest contention & feels that 12%-15% would lead to more scarring on the hillsides. Has worked with the US Forest Service on many issues on his land. Thinks 20% is reasonable and is probably what his road is. Just do not use roads if conditions are too bad. Respects wildlife corridors, overall applauds the work and

considerations that went into the draft, but looks at this document as enabling the legislation to degrade current rights. Will write a letter with other comments.

9. Tammy Randall Parker – (US Forest Service) Thanks the PC for all their work on this thoughtful and balanced work, and thanks the staff for doing a great job keeping the US Forest Service informed throughout the project, continue to enjoy the good working relationship with Ouray County. Done a great job including the permitting process. Recommends adding language regarding snow maintenance & utilities as permits will need to be obtained from the US Forest Service. These are in addition to other permits mentioned. Ingo asked for clarification which Ms Randall Parker provided. (submitted written copy of comments)
10. Sheelagh Williams – Great that everyone came tonight. Staff & PC have done good job of listening & looking out for concerns of those involved in process and those impacted by it. Mining is important here, and nothing in the proposal is meant to harm mining. This actually offers protection of claims by keeping homes out of the way of mining operations.
11. Scott Williams – Agrees with Sheelagh and asks about the boundaries of the zone. Thinks the Silver Mountain Industries 155 acres should be included. (submitted photo and map) No need to include those claims in designated Wilderness areas. The PC has gone over everything and reached consensus on most provisions, not on others; he agrees with some and disagrees with some, but thinks the PC should go forward, hates to see further delay.
12. John Hollrah – Thanks PC for time & effort, likes the 6 points under purpose & intent. It's clear this won't affect mining. Need to address the question of a split estate – possibly not allowing houses on the surface in order to keep mining ability open. Sympathetic to development issues which is why we need codes. Amazed to hear a threat to litigate on a good piece of code. Emergency services may not be available but saying it's "tough luck" isn't either. The same people who say they don't need services will be sueing the county when the county doesn't respond.
13. Shane Wolford – Asked to clarify that the intent is that mining is exempt and that these regs do not apply to mining. Also has question on size of structures mentioned. Is mining exempt from that, too? You can do anything you want as long as it's for mining?
14. Alice Leeper – Asked PC to include the need for commercial opportunity in this new zone. Possibly for restaurants, a mining museum, tea or coffee house (like they have in Switzerland), tourism. Would be a need to address water, sewer, access, geohazards, parking, etc just like in other zones, but still need the possibility of a commercial enterprise. Also would be difficult to limit building to ½ an acre.
15. Barry Maclennan – Feels this is far too restrictive. Main problem is that we have to come to a subjective, ever-changing group of people to ask for permission for everything. Private property has rights. House restriction of 1,500 sq ft is too small, not enough buildable areas, standards are too low. Historic preservation is good, but the historic density was higher than it is now. Some other stuff is good like renewable energy. Certain people don't want other people back in the Alpine Zone. Noted other issues like site clearing, height, and loss of farmland.
16. Linda Kelson – Feels that the need for infrastructure to support buildings would cause overbuilding and loss of plant and animal habitat. Agrees PC should check on road grades, existing roads are often better to use. Should consider all applications on a case-by-case basis to keep Ouray County beautiful. A tea house might be nice.
17. Bob Carufel – Owns 120 acres of mining claims. Will come a time when he wants to sell 80 acres & the more rules & regulations that are on the property, the harder it will be to sell. Has issue with footprint of 2,500 sq ft home with a 7,500 sq ft footprint, and a ½ acre footprint (envelope) – feels it's out of proportion. Over 5 years ago, his brother started the building permit process on one of their parcels with the US Forest Service to

show legal access. It's a very lengthy process. It takes a long time to deal with the system, and he's concerned this South Alpine Zone is too restrictive and allows for too many variance applications.

18. Ronald Williams, Sr. – Patented mining claims are private property. Don't agree with any of it, opposed to all of it, have enough government already.
19. Cristy Orvis – 6th generation, 132+ years on surface acres. Not satisfied that this was drafted to exclude mining. Already have sufficient county regulations that have worked for many years. What is the problem that precipitated this? Scenic vistas all include mines. Concerned their mine property value will decrease, Ouray County will lose tax revenue. Asks to table until PC comes up with a proposal that represents the livelihood of members of this community that are the heritage of Ouray County. Feels this represents citizens who want to close the door after they've arrived.
20. Alvin Ficco – Owns mining claims. This is a plan to stop building on mining claims. County needs the taxes. Discriminatory.
21. Norm Fedel – Totally against all of it. Can't maintain your own roads?
22. Eli Doose – Concerned about property rights. Regulations to build a home are much more lenient than this document. It's un-American. Folks are trying to alter existing regulations for their own benefit. Locals have paid taxes for a long time, and we know to ask permission from each other when we want to use each other's land. Need to look at how this affects property rights.
23. Ken Garard – In today's environment, people are suspicious of government intrusion or encroachment on private property. Private property rights prevail.
24. Randy Gillum – Has surface rights on acreage. PC should look at tax rates on mining claims vs. other taxes and figure out how to replace the income. Is against these regulations due to property values. Society is obsessed with over-regulation.
25. Andy Mueller – Is attorney for clients of firm who own mining claims - both mining on and wanting to build on their claims. Questions - Is there a need for this comprehensive regulation? Where is the emergency occurring? Why is there such pressure to pass this regulation? Clearly there has been a lot of work, but suggests PC needs to take a breath and step back and don't rush. These regulations are far too broad, the scope and breadth are too wide. Reviewed many aspects of the proposed section including road grade, building envelope, and unintended consequences. Suggested areas that need improvement or clarification. Asked PC to table action pending more input. Believes the notice for this meeting was defective.

Collin and Ingo re-iterated that PC has welcomed comments throughout this process.

Ingo asked to have a break - 8:15 PM.

Re-opened public comment - 8:29 PM

26. Tim Pasek – New to Ouray but according to Linda Ingo has lived here before. Doesn't like the apparent infringement on private property use. Still so much debate on this, recommend the regulations be tabled.
27. Mike Hockersmith – Agree with Andy on all points. Also wanted to note 30.4 C to B, regarding multiple property mergers. Lot merger is legal in Colorado, but not appropriate. Consider fractional ownership in mines, and right to use including building a driveway. Proposed code is unworkable in current form. Does not disagree with the need for reasonable regulation of private property. Of the 1,200 mining claims, why not concentrate on the 100 or so claims that can negatively impact the county, suggests buying them like Ironton Park (Boulder) did. Public monies were secured to purchase the land. This should be the model. Thinks PC and BOCC members should ask themselves, "If I owned property subject to these regulations, would I like them? Would I think it was fair? Would I think it was balanced?"
28. Dick Zanett – Opposed [to the proposed regulations)

29. Jack Clark – Opposed [to the proposed regulations]
30. Jim Siegmann – Unreasonable to prohibit plowing of private drives, particularly where mining claims abut Hwy 550. Don't believe owner of multiple claims should have to forfeit in order to build on one of them. Should not need a variance for a driveway of moderate slopes in Alpine Zone. Steeper causes less disturbance. Activity envelope is extremely small. If engineers and geologists say it's ok to build on a property, County should not prohibit it. Has issues with tree removal, should have provision for firewood. State does not license geologists. Not a fan of the variance process, as he has had one denied. Rules need to match the real world and this provides no relief valve. Worried about language stating that *any other condition* can be imposed. [that may not be relevant to the variance]
31. Ken Orvis – Sees this as taking of private property rights. What if these same regulations applied to the whole county? "If you value your property rights, don't restrict mine." Think this should be tabled until it's a lot clearer.
32. Joe Calhoon – Would like to see this tabled. This is way out of line.
33. Cliff Wolford – Opposed
34. Susan Conrad – Opposed. Way too restrictive. Needs more discussion. Deeded property is greatly affected, not just mining claims.
35. Terese Seal – Opposed

**8:44 PM – PUBLIC COMMENT PORTION OF THIS HEARING CLOSED**

PLANNING COMMISSION DISCUSSION

- Collin – reiterated that PC received a directive from BOCC to enter into this process, are working under their resolution. Time restriction is due to moratorium. Made 5 or 6 pages of notes, and PC will now have discussion on next steps.
- Ingo – although tonight's comments are over, we've heard a lot of new ideas tonight, could the period for written comment be extended to some future day?
- Cockle – also took lots of notes. Thought issues were residential and mining regs were intentionally left out. With tonight's input PC needs to be sure the loopholes are filled. Is a mining claim owner. Recommends tabling to discuss further, especially to define "historically" (ie when does history start) and "fractional ownership" issues.
- Lipton – sees lots of issues. Many points made tonight are based on misinformation or resulted from misreading of the document. Agrees more time is needed for review. BOCC placed a moratorium on building on mining claims and the intention was to get out of the moratorium ASAP. Tonight's comments would have been nice to have over the past 1½ years. Agrees to hold off on a decision tonight.
- Luttrell – there was a lot not discussed before due to not having the knowledge and expertise to do that. Maybe clarify with some sort of statement to the paper to explain what we're doing.
- Ingo – wondered if as a courtesy to citizens there could be informational meetings held around the county to explain the document.
- Collin – thinks with broad brush of interested parties here tonight having meetings around it's not necessary to move the meetings around at this point, but would strongly encourage everyone to come back and be a participant. No one is denied time to speak, and over all the meetings very few people came. The early meetings had a few mining interests attend, but they didn't come back. Believes the issue should be tabled for date certain and written comment period should remain open for more input.
- Chris Pike asked it the PC would examine the challenge about this meeting being noticed incorrectly. Collin believes will have to address but opinion is that notice was correct.

- Luttrell – If people are planning on submitting comments, PC would appreciate positive suggestions & feedback rather than just complaints.
- Cockle – clarified that road specs were intended for new development. If you want to plow your own road go ahead, but understand that county maintenance will not.
- Ingo – asked for clarification on when next proposed meetings are. Castrodale – July 14th (public hearing/regular meeting) and 21st (workshop to discuss Sections 3 & 19)

M/S/P

- Motion/Ingo - to extend the public hearing to accept written comments until June 29th at Noon, after that time no more further comments will be accepted under this public hearing, and that PC meet on July 7th to talk about what we've heard and where we wanna go on this in a workshop format about what we think we can start working on and kinda line out how we're gonna get to what we need to do up there on this.
    - *Clarification submitted by Ingo on 7/9 and approved by the Planning Commission:*
        - Ingo moved to extend the public hearing to accept written comments until noon on Monday, June 29th and that the Planning Commission meet on July 7th to talk about what we've heard and where we want to go on this. Ingo commented that this could then be in a workshop format.
- 2nd - Luttrell
- Collin opened for discussion. Deganhart asked for clarification on whether they are continuing this public hearing, Ingo said yes, only for written comments and only through June 29th. Deganhart reminded PC of process for another public hearing which will need to be scheduled and noticed. Collin is not willing to do that because this may take more than one more workshop. Ingo wants to give the county more chance to comment, but in a written form only. Collin reiterated that if substantive changes are made there will need to be another hearing. Mueller clarified that additional public comment is welcomed and encouraged.
- Lipton asked for amendment to motion - cannot make a meeting on the 7th and asked to revise to the 9th at 6 PM. All agreed.
- Howard Greene asked how the extension relates to the moratorium. Asked whether BOCC will extend. Collin said PC is not going to shove this through.
- Collin called for vote. Motion as amended passed unanimously.

**9:10 PM ADJOURN**

Sue Husch

**Submitted By:**
**Sue Husch**
**Interim Land Use Assistant**

Ted Collin 7-14-09

**Approved By:**
**Ted Collin**
**Planning Commission Chair**

*Commissioners were scheduled to meet again. There was more discussion on the issues that Deganhart had with the agreement.*

*Commissioner Albritton noted that Gilpin County's service in the past had been fine and Ouray County needed it. Assuming that Deganhart could work out her issues and get a document that the Commissioners could sign, she suggested that the Board conditionally approve it now.*

*Commissioner Meinert amended his motion to approve and authorize the Chair's signature on the Master Agreement with Gilpin County subject to the Ouray County Clerk and the Ouray County Attorney modifying the language to something that they both found acceptable and workable. Commissioner Padgett seconded the amended motion. With no further discussion, the motion passed unanimously.*

10. **Request for approval of July 27, 2009 Joint Board of County Commissioners and Planning Commission Town Hall Meeting minutes** *[This item had been addressed earlier in the meeting but the Commissioners needed more discussion.]*:

Commissioner Padgett asked to table action on this item until she could review it further. Commissioners Albritton and Meinert agreed.

13. **Request for adoption of Resolution 2009-040 withdrawing the proposed Section 30 / South Alpine Zone Regulations from Board consideration at this time:**

Commissioner Meinert recalled that the Board had talked earlier about tabling rather than "canning" the regulations. The Planning Commission and the public had spent a lot of time on the discussions on the draft Section 30 and he did not want to see that work minimized by suggesting that the County was going to abandon it completely. Basically, the Commissioners were saying that they wanted to try a different tack to see if they could address the concerns everyone had, including the Planning Commission, on development in the mining claims areas. He suggested adding language that recognized that at a future date the Commissioners may find that they would have to revert to a Section 30-type of modification to the Land Use Code not trying to prejudge the outcome. He suggested adding *"unless and until it is determined by the Board that the concerns about development on mining claims cannot be effectively addressed by expansion or modification to the existing regulations"* at the end of the penultimate recital. In the first *"Now Therefore"*, he suggested adding *"for the time being"* after *"...Planning Commission... "*

Commissioner Padgett felt that the process had been hijacked in this case, where the Board of County Commissioners had asked the Planning Commission for a recommendation that the Board of County Commissioners still had not received. She felt that the process should play out because 1) that was what the County did, and 2) it would place on the record the Planning Commission's reasoning as a whole and a minority opinion if there was one, that would be placed in a file for posterity. To craft a resolution when the process had been halted seemed to put the Commissioners in a difficult position. She appreciated the additional language to minimize the corner that the Commissioners had been backed into by this process having not been completed and without a recommendation in hand. How could the Commissioners resurrect something on which they never got a recommendation?

Commissioner Albritton felt that the problem with going in that direction now after drafting the resolution and having had a work session with the Planning Commission where the Commissioners had indicated to the Planning Commission members how to move forward, to go backward now and then try to force a vote would change the game. She was concerned that, given the statements already made by the Planning Commission on this section of Code, by putting it to a vote and getting the answers and having the members articulate their reasons, the Commissioners would be setting up a worse predicament by then turning around and scheduling work sessions on the issues that the Planning Commission members had already lambasted. She did not think that the Board of County Commissioners had been backed into a corner. It was clear that the County's outreach and process had not reached the people that it needed to get to. She admitted that it was totally frustrating and aggravating to get to this stage of the game and have people show up in opposition, but they were present now and it would not be productive to push through. These people were the landowners. Her interest was in getting something done and not reigniting the emotions behind it. She was not agreeing that they were right to come in at the eleventh hour but reality did not always intersect with common sense.

Commissioner Meinert agreed that it would not be productive to force the Planning Commission to readdress this issue and that was why he suggested adding language that would preserve the work to date and would not suggest that a conclusion had been reached at the Planning Commission level. In the resolution, the Commissioners were asking the Planning Commission to forward the minutes and any communication received in the public hearing. The Commissioners had to acknowledge that this impasse had been reached because the Planning Commission had been unable to reach a resolution. Why force the Planning Commission members to try to reach a resolution? It then held the suggestion out there that if the County had to go back to a Section 30-type of modification, it could be done without going back to the Planning Commission again. Whatever the Commissioners would do would have to go back through the Planning Commission hearing process because the previous hearings did not reach a resolution. Basically, the Commissioners were taking Section 30 off the table for the time being giving them and the Planning Commission time to reach a solution to the problem.

Commissioner Albritton offered that there may not be a solution. She was not prepared to say that the Commissioners did not need a document to accomplish what they wanted. If there was a way to accomplish what they wanted and address the issues in another way she was willing to take it off the table now and get the other parties involved. She was not ready to say that the Commissioners would not go back to this.

Commissioner Padgett was suggesting that the Planning Commission or at least the majority had deliberately decided not to forward the draft with a recommendation and this was setting a precedent that the Planning Commission may simply decide to stall rather than send a recommendation to feel that it was in control. She was not opposed to the citizens who did not have input. Certainly they could come to the Board of County Commissioners' public hearing and voice their concerns. Her frustration was that the Planning Commission could have come up with a recommendation that either reflected the majority or one or two minority opinions but had simply decided not to.

Commissioner Albritton agreed. She did not take it as a precedent from the Planning Commission but a learning opportunity. She felt more of a burden to back up because this was a new concept. She did not anticipate problems from the Planning Commission in the future because the Commissioners would not tolerate it. She would be advocating for timelines to ensure that the process would go more smoothly.

The Commissioners had more discussions on the topic.

Commissioner Meinert did not mind some sort of rebuke to the Planning Commission on the way that the process was handled but he did not think that the resolution was the right vehicle. He would not have gone along with this course of action if he had not felt confident that the Commissioners could accomplish the same objective by tweaking existing regulations. He had concerns with Section 30, especially in the way it had evolved in Planning Commission work sessions. He concluded that there was nothing to be advanced by forcing the conclusion of a process that did not come to a conclusion.

Sheelagh Williams related that one of the things that the ROCC (Ridgway-Ouray Community Council) Land Use Committee would like to see was a firm plan and schedule for moving forward, understanding that the results of workshops may lead to other workshops. At the least, a tentative schedule for the workshops would be helpful to ROCC for scheduling purposes.

Denise Gendreau spoke to comments from the last Planning Commission workshop that caused her great concern. The Planning Commission acted in extreme bad faith and, as a member of the public, she felt poorly served. The citizens who were new to the subject at the workshop were being whipped up by the Planning Commission to a state of fear. She heard from Planning Commission members that they should throw it in the trash can. When someone asked a question about why there was a moratorium, one Planning Commission member replied that, "*they* only do something like that if *they* want to take something away from you." The Planning Commission had a role to educate the public as to where this was coming from. If Planning Commission members had the draft for six months, at least, and had fundamental problems with it, they should have stated it then. What they did instead was to play with it like a cat with a mouse and at the very end when they had an epiphanous moment, it was difficult for her to determine whether they had ever seen it before. She agreed that there needed to be some sort of rebuke.

Commissioner Albritton felt that a rebuke was definitely in order but asked how far did the Commissioners want to go.

A discussion followed. The Commissioners spoke about reprioritizing work on the Code changes.

Commissioner Meinert suggested that the resolution be changed to reflect that the first work session would not be on visual impact regulations but to establish a timetable of work on all sections of the Code revisions that would apply to residential development on mining claims. All agreed that a timetable was most important. Commissioner Padgett suggested striking the part that said mining claims and just say residential development. Commissioner Albritton was afraid that the people would tune it out again until there was more mention of mining claims. Commissioner Meinert agreed.

The Board agreed to table action on this item until after lunch in order to make corrections to the resolution.

**14. Request for approval and authorization of Chair's signature on Letter of Intent with Ennovate Corporation for Energy Service Company (ESCO) services concerning boiler replacement and other energy services at the Ouray County Courthouse:**

Hunt advised the Board that this item was a result of the last meeting.

Commissioner Padgett wanted to make a change to the third bullet point on the first page of Ennovate's letter to the Commissioners, to add the word "aggressively" to read, "Ennovate agrees to secure financing and also agrees to *aggressively* investigate any available grant opportunities." *[Emphasis added for readability.]* Because it was a letter from Ennovate, the change was handwritten in.

Commissioner Meinert admitted that he was totally disgusted with the ESCO process. The Commissioners should have foreseen these kinds of problems when they first started out on this. He was not 100% satisfied with the way this was unfolding as far as the black box uncertainty as to what the County was getting for its money, what commitments the County was making, and that the Commissioners were agreeing to execute a future contract without having ever seen it. However, he agreed to go along with everyone else to keep it moving.

Commissioner Padgett did not like the statement on the Letter of Intent that the total project price would not exceed $200,000 when Ennovate's estimated price was $20,000 less. Hunt explained that the Commissioners had already given Staff direction in that regard. Commissioner Meinert interjected that there had not been a ±15% final savings. He felt that Ennovate was trying to erode the savings by 15%, which was why he had agreed to this to begin with. He would go along with the $200,000 because that was the instruction to Staff in the last meeting but not the 15%. Hunt reminded him that Ennovate had said that there would be a ±10% savings in the meeting.

Hunt advised the Board of her take on this. She felt that it was the right direction and a low-risk approach to doing business. It was the right thing to do. She related that Facilities Manager, Will Clapsadl, felt that way, too. She would not propose something that she did not feel good about. If it came back with "ugly numbers" the County did not have to do it.

Commissioner Albritton noted that there had been some discrepancies as far as the professional thought on the geothermal component and she wanted to broaden the scope of whom the County would be working with on that aspect. A discussion followed.

Commissioner Padgett felt that the Commissioners were being pushed to make the geothermal work. She admitted that it would be "awesome" if it did work but the Commissioners needed to look first at the water rights. She wondered how the County could do anything without first determining that and figuring out the temperature of the water, etc. Staff had done a lot of work and it was the right way to go but she was frustrated that the City was really pushing it without really understanding it. There was more discussion about differences with the City of Ouray about the process.

Commissioner Albritton admitted that her frustration was with the timeline and setup, that the Commissioners were being asked to make a commitment first and get details later. The information was vague and not easily understandable.

Hunt pointed out that the County was not obligated in the initial phases. Before making a decision, the Commissioners would meet again with Ennovate.

Clapsadl added that this was the least amount of risk to replace the boiler this season. He understood the Commissioners' frustration of the process but the County was pushing to get it started to have it for this upcoming season.

***M/S/P**—Motion was made by Commissioner Padgett and seconded by Commissioner Meinert to approve and authorize the Chair's signature on a Letter of Intent with Ennovate Corporation for Energy Service Company (ESCO) services concerning boiler replacement and other energy services at the Ouray County Courthouse with the addition of the word "aggressively" on the Letter of Intent [as discussed above]. There was no discussion. Motion passed unanimously.*

**1:23 The Board recessed for lunch and reconvened at 2:12:**

**F. 2:12 General Business,** *continued*:

**13. Request for adoption of Resolution 2009-040 withdrawing the proposed Section 30 / South Alpine Zone Regulations from Board consideration at this time,** *continued from earlier in the meeting*:

Deganhart presented the corrected version of the resolution for formal Board approval.

***M/S/P**—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to adopt **Resolution 2009-040** withdrawing the proposed Section 30 / South Alpine Zone Regulations from Board consideration at this time and setting out a revised course of action to address concerns about residential development on mining claims. There was no discussion. Motion passed unanimously.*

The Commissioners agreed to schedule the first work session on September 8 at 9 a.m. at the Land Use / Road and Bridge facility and to invite the Planning Commission.

**10. Request for approval of July 27, 2009 Joint Board of County Commissioners and Planning Commission Town Hall Meeting minutes,** *continued from earlier in the meeting*:

***M/S/P**—Motion was made by Commissioner Padgett and seconded by Commissioner Meinert to approve the minutes for the July 27, 2009 Joint Board of County Commissioners and Planning Commission Town Hall Meeting as presented. There was no discussion. Motion passed unanimously.*

**G. 2:21 Commissioner / Administrative Reports:**

**Commissioner Albritton** discussed the following:

1) **Building Official** People upset about having a part-time building inspector. He will be brought back full-time for building inspections when necessary.
2) **Treasurers Conference** She spoke at the conference here about mining claims. Bernie Buescher, Secretary of State, spoke about elections.

**Commissioner Meinert** discussed the following:

1) **Calendars** GVTPR this Thursday at 3 p.m. at Region 10 in Montrose; Black Canyon Land Trust on the evening of Friday, August 28 at the home of Julia Johnson; Colorado Renewable Energy Conference on Friday and Saturday; Road Committee on September 1 at 3:30 at Land Use; Tri River Extension Budget Meeting on September 4 at the Delta County Courthouse at 9 a.m.; the mining claim work session on September 8 at 9 a.m.; Ouray County budget work session on September 10 at 9 a.m., location TBA; Club 20 Fall Meeting on September 11 and 12 in Grand Junction at the Tri-River Convention Center, all day; Tri-County Meeting September 15.

## Section 30

## SOUTH ALPINE ZONE REGULATIONS

### 30.1 ENABLING AUTHORITY

The provisions of this Section are enacted under the authority of C.R.S. § 29-20-101, *et seq.*, the "Local Government Land Use Control Enabling Act of 1974", C.R.S. § 30-28-113 and C.R.S. § 30-28-116.

### 30.2 PURPOSE AND INTENT

The purpose of the South Alpine Zone ("Zone") is to:

A. maintain the recognized use by right of underground mining in the Zone;
B. conserve and protect the natural environment and its resources while also recognizing the private property rights associated with parcels in the Zone;
C. maintain the area's historic character and preserve historic access methods;
D. maintain a small scale, low density backcountry character and lifestyle in keeping with the historic mining nature of the area;
E. recognize the technical challenges associated with residential construction in the Zone due to extreme geohazards and climate;
F. recognize that there will be limited public services and facilities available to properties within the Zone due to limited access to parcels, extreme geohazards and climate in the Zone.

Property owners should understand that most of the properties in the Zone were created in accordance with the General Mining Law of 1872 for the purpose of exploring for, discovering and removing certain mineral deposits and were not intended to be used for residential purposes. Property owners in the Zone must recognize that access to their property may be restricted in the winter and that allowed improvements to roads may be limited. Because of these limitations, emergency vehicle access to properties within the Zone may not be possible. Persons interested in owning land with more available access to public services and facilities are advised to seek property in more developed areas of Ouray County.

### 30.3 APPLICATION OF REGULATIONS

The regulations set forth in this Section shall apply to all properties located within the South Alpine Zone as shown on the South Alpine Zone map, with the exception of lots or parcels located within an Ouray County approved subdivision or planned unit development. These regulations shall not apply to Underground Mining within the Zone or to any residential structures associated with a State-permitted mine operation.

The Board of County Commissioners met in a special session of the Ouray County Board of County Commissioners and the Ouray County Planning Commission on July 27, 2009. Those present for the session were County Commissioners Heidi M. Albritton, K. Keith Meinert and Lynn M. Padgett, and Planning Commission Members Carl Cockle, Ted Collin, Mark Howe Ken Lipton, Robert Luttrell and Linda Ingo. Linda Munson-Haley, Clerk of the Board, took minutes.

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

**7:01 p.m. The Board of County Commissioners of Ouray County and the Ouray County Planning Commission held a Town Hall style meeting to hear public comments and concerns about whether new regulations may be appropriate or necessary in the southern end of Ouray County. The Board and the Planning Commission recognized the importance of public input into the process and strongly encouraged the public to attend and voice their concerns and/or make recommendations.**

*[The Board of County Commissioners received written comments from Melissa Johnson, Jane Nash, Glynn Williams, Frank & Penny Starr, Andras Maros, Robert and Donna Green, Albert J. Berni, Stephanie and Joe West, Hans and Lisa L. Schenk, Randolph and Jennifer Parker, Elizabeth Kelsey, Allen and Judy Cockle, Pam Kraft, Frank Robertson, Dean Anderson, Alan Staehle, Denise Gendreau, Sara and Will Coulter, David & Maryanne Miss, Jill Markey and Leif Juell, Kate Kellogg, David G. Conrad, David Vince and Dottie Miller, Don Kellogg, Lance Barker, Walter W. Rule, Jr., Jeff Litteral, Debra Hynes, Carolyn L. Kircher, Norman (Butch) Clark, Aaron Calhoon, Abigail S. Lang, Ron Barrett, Rein and Jan van West, Shawn McKearnan, Paul Hebert, and Tom McKenney. The following submitted written comments at the meeting: David Tippit and F.W. Baumgartner, Ronald F. and Jewel Williams, Ron Barrett, Randolph E. Parker, Jennifer Parker, Joe Calhoon, Rosemary Esty, Jon Esty, Dave Calhoon for a group of patented mining claim owners, and Bob Risch for the Red Mountain Project. Correspondence received after the meeting was from Dennis F. and Christine Reece, and David Vince.]*

Commissioner Albritton explained that the purpose of the meeting was first and foremost for the Commissioners to explain why they were talking about residential development on mining claims. The second purpose of the meeting was to take the pulse of the community on the issue. She stressed that it was not a public hearing. The Commissioners would be talking about whether or not the County should be pursuing regulations on residential development on mining claims. The Commissioners would make a presentation and then take public comment limited to whether or not the public agreed that the County should pursue regulating residential development on mining claims.

Commissioner Albritton narrated a PowerPoint presentation *"To Regulate or Not to Regulate – That is the Question…"* that is included with the materials from the meeting.

At this time Commissioner Albritton asked for public comment. *[The following comments are paraphrased.]*

**Michael Cassidy,** resident from Loghill Mesa: Absolutely. The current board has the foresight and has raised a lot of good questions. Congratulations on getting ahead of the game and there needs to be regulations. The very issue of looseness or tightness may suggest appropriate compromise. If we destroy this then why will anyone live here?

**Denise Gendreau:** The county needs reasonable regulation in the zone. She read a quote from a letter by Sara Coulter who cited the two studies, the Theobald Study that identified 9,300 acres of mining claims in Ouray County, and a study funded by the Telluride Foundation, "Telluride in 2030." Coulter stated, "If we fail to persevere in this effort of regulation the County will become just another beautiful Western community compromised into mediocrity by poor land use planning." The conclusion of both studies was "to increase protection for parcels of high visual value." *[Both Denise Gendreau and Sara and Will Coulter had previously submitted correspondence to the BOCC.]*

**George Kernan:** For restrictions. He had been here 14 years going on 15. The area was very beautiful and he and his wife agree they don't want a lot of development without a lot of consideration because people have a tendency to overbuild, etc. He was for restrictions but need to consider very carefully what they are building.

**Troy Abel:** We own 31 mining claims up Camp Bird Road. They came here nine years ago with their son Jake. They did due diligence and went to the County who said that they could build on them and they have been working for nine years to build a road to them. They have worked to build a bridge that you cannot see from Camp Bird Road and a housing site that you cannot see from Camp Bird Road. If you want to protect a view, then take people who own and give incentives. He's a registered Democrat. He has a lot of Republican friends that he cannot talk with about politics because they disagree. This was one issue that did not come down on party sides. He did not want to limit private property. If he cannot build, the County took his land and his dream away.

**Bob Wolford:** He is a 4th generation Ouray County resident. The PowerPoint presentation asked, "to regulate or not." In his opinion it is already regulated in the Land Use Code, the road standards, a grade of 12%, have to go through various things for avalanche danger – the County doesn't need more layers of bureaucracy on top of what we already have. We don't even have a number on the amount of claims, particularly those "over the side." We have a Code that is working now and don't need further regulations.

**Frank Clomberger:** It comes down to a matter of property rights. The letter written by David Tippett, president of the Revenue Virginius Mine. These regulations taken together as a whole have the effect of depriving rural landowners of the use of their lands without compensation and as such constitute a taking that would be remedied in court. The proposed regulations would deprive landowners from the most basic right of access to their property. He cited Land Use Code Section 30.14 that states that all winter plowing of roads and driveways in the zone shall be prohibited, and Section 30.4.C.2 (a) that prohibits construction of driveways in the zone except where the property abuts a Ouray County

or Forest road. It was his understanding that U.S. patented mining claims were granted with the implicit right of access to public land notwithstanding the proposed South Alpine Zone regulations. Many of the proposed regulations prevent meaningful development or constructive use of their lands. The County may also wish to consider the effect of such regulations on the tax base. He discussed purchases of open space and such programs.

**Daniel DeFreval:** Against any more regulations. As it is now if you apply the rules of the County plus the rules of the BLM, rules of CDOT, and rules of the Forest Service, there are already so many rules to comply with and if you want to do the right thing there are enough encumbrances of what you can do with your piece of land. Plenty of rules already. Many of the people who own the claims are as concerned about the beauty of the landscape and integrity of the county as the people who want to make more restrictions.

**Liana Clarkson:** Thanked the Planning Commission for a lot of work. She is against regulation. They just built under the existing regulations of the County and it was work. CDOT has more regulations on roads on ingress and egress than you can think of. And you need to meet the demands of the Forest Service. Ouray County has visual impact regulations, and all kinds of regulations that they worked hard to meet. 95% of the mining claims are not buildable. It was alarmist to assume that there would be 1,100 cabins out there. Have to prove there is water, a power source, etc. No to regulation. If you regulate more than you are now, it will all go away. Just say you don't want any more homes.

**Bud Zanett:** His family's roots go back to 1918 in Ouray, primarily in mining and many other things. One of the quotes on the PowerPoint presentation, to protect private property rights, that is the issue they must continue to remember. There are property rights. His family had over 150 patented and unpatented claims with only one building site that was so hidden you couldn't see it.

**Randy Loftis:** He has lived in the Alpine Zone on Camp Bird Road for 12 years. They feel like it is a minority / majority thing, the property owners in the Alpine Zone versus the minority. He supports controls, good design, all of the things we like. He likes open spaces. Private property rights should rule in the compromises that have to be reached to achieve the goals that we all want.

**Donna Green:** Bob and she have lived in a home on Log Hill for 14 years. They are here in support of development of regulations.

**Randy Parker:** He is a taxpayer in Ouray County. One of the basic tenets of Land Use planning is that private property rights of the individual are not superior to the rights of the general public to a healthy, safe, economically viable community. The need to balance the rights of the individual property owners with the rights of the public has been established in Ouray County for more than thirty years and is the foundation of our Land Use Code. The right of these substandard lot owners to convert their mining claims to a residential lot is not, should not, and cannot be unregulated. Especially true when the conversion is in direct conflict with the stated policy of this county to promote limited, low density in the Alpine Zone.

**Reg Cridler:** He has been here since 1960. He has no mining claims but has friends who do. He has been involved in Land Use planning in other counties for over 25 years. He was quite surprised to read the proposed Section 30.2. It appeared that it may have been lifted right out of Pitkin County or Routt, obviously not Mineral County or Saguache. Nowhere does it say that the general Mining Law of 1872 patenting process was for mining, not residential purposes. He realized that new homesteaders feel that our ranches, homesteads, and mining claims are their open spaces but they are not owners of these private properties and he believes that we have the right to change the use. What active mining claim did not have a residence on it? It is better in his opinion to draft regulations that are appropriate for the current lifestyle. It was better for their private property rights to let something happen once and then take action to correct it rather than create a maze of regulations that may be unneeded in the future. The current regulations are adequate. You need to bring your assessed value up and many of those claims will come back for tax sale.

**Michael Covington:** He has five claims in the Paquin district. He felt a little excluded because his intent was to mine on them but he was sympathetic to those who wanted to build. If he does not find anything he may want to build. With regard to roads, he felt that the 12% grade compromised a lot of the visual aspects. If there is a preexisting road regardless of its condition and it's been there for over 100 years and you respect it, it fits right in. If he was to convert to real estate and comply with the 12% grade he would put a huge slash right across the hillside and it would not annoy anyone as much as it would annoy him. There are so many rules and regulations now it was hard to do anything. Just do it case by case. Have a rule that says that people should spend at least one year on their property in a yurt, or a tipi or a tent or something, before moving in. He was tired of insurance companies ripping them off. When you put insurability into these remote areas someone will come along and want the insurance claim. These areas are uninsurable. If it goes up in smoke, it goes up in smoke.

**John Hollrah:** He wanted to make a point that the argument that private property rights needed no government regulation was misguided. It assumes that private property rights are one-directional and that there aren't private property rights that are affected when certain action is taken. This argument is always two-directional. If Dave Calhoon or Andy Mueller are going to have a hog factory farm put in next door to them he would be standing next to them to make sure that it would not happen. The notion that the Commissioners' job was to maximize private property values for one or a special group of landowners has never been a task of the County. There are a lot of people who want to have some regulations, people who are very conservative and are pro private property rights, and the reason is they all own businesses. The vast majority of the people know that this goes up in smoke to the extent we don't protect the area that this zone is trying to cover. The most important thing the County can do in this zone would be to limit the footprint to something similar to what small houses were back then, it might be 1,000 sq. ft., and that would allow the notion of cabins and development to occur but would control the vast impact that could be had.

**Barry Maclennan:** All agree on one thing. We are not trying to have no regulation at all. Bob Wolford was right, we are regulated. He is a builder and he knows about regulations. We have permits to build in the Alpine Zone, we have

geohazard reports, septic reports, height limitations, visual impact, etc. The visual impact is not too subjective. If we just say we don't like structures – that is subjective. He owns a jeep business and people tell him that they like the structures, old and new. There are buildings all through the Alps. They are not ugly and do not destroy the Alps. We don't want no regulations. He has a rather large house in the Alpine Zone. The miners' houses were small because they had one or two miners in them. His house is a little bigger but per capita, he has ten in his family, it is not too big. Who decides on what size house? Is a larger structure necessarily ugly? Not really. Is it going to destroy up there? He didn't think so. How many houses have been built up there in the past 10 years? He knows of two houses. It's private property… *[Time was called.]*

**Dave Hamilton:** Certainly hear a lot of people with a great deal of concern about our beautiful mountains and valleys and have people who toiled through these mountains. One hundred and fifty years ago they came and ripped through these mountains. Today we celebrate the carnage from then. Do you think that would happen today in this environment that they would let people do what they did one hundred and fifty years ago? He is very much in favor of private property rights. He did understand the impact of growth in the mountains. He urged the Board of County Commissioners to take the approach of seeking resolution outside of regulations. Look for the answer before you start regulating. Perhaps there is a path we can take that does not involve stepping on someone's rights in favor of one opinion over another. Perhaps we can resolve this without government control.

**Tom McKenney:** He supported more of the same type of regulations and direction that was directed by the first three master plans referenced earlier in the evening. The IGA between the County, Town and City, was created so that the town and city would accommodate growth, would take industry, whatever, in exchange for the county keeping a rural character. Every zone in this county has a set of uses by rights, conditional uses, special uses, based on that specific zone. That's why Ouray County looks like it does today. He thinks the southern Alpine Zone has never really been looked at because everyone thought, "Who would ever build up there?" The impact is coming and we need regulation that is looking at property rights and the entire gamut of that just like any other zone in the county. Thanks for taking this on.

**Barbara Meckel:** She spoke on behalf of herself, her husband, and her brothers and their wives. They feel this current Board is very thoughtful and careful and is working hard to make various interests come together and would like to commend them all.

**John Metcalf:** He lives in the county outside of Ridgway. Congratulations to the County people who put together this presentation. Good job. He had a contract on a mining claim on the back side of Aspen Mountain and had a while to think about it before purchasing it. He decided not to do it because it was a mining claim. The word was *"mining"* and the purpose was for mining. If he was purchasing it with the intent to build he was being dishonest and doing an end run around the purpose and intent of the property. The County should be considering that the purpose of these mining claims was for mining. It seems that mining has not gone away. We may be on the cusp of a resurgence in mining. He found it hard to see how you could have houses next to mining operations where there's a lot of blasting going on.

**Ken Orvis:** He lives by Ridgway. He would like the Commissioners to think… the private property rights are so important. If you think back all these different places where we were allowed to have private property rights, Solar Ranches, Log Hill, doing all of that subdividing. If it were not for those private property rights most of the people in here wouldn't be here to begin with. They enjoy their private property rights so why shouldn't we.

**Scott Butters:** He is the President of Camp Bird Colorado. They own Camp Bird Mine and the company he works for owns the property in subsidiary and has for 46 years. He agreed that some sort of regulation was needed. Do have it already. A slow course, tightening areas where needed might be recommended, but in general if you take away the rights of the property owner you are diminishing the value in what they own. The best government is a small un-intrusive government.

**John Trujillo:** He was born and raised here, lived here 59 years and graduated from high school here. His wife's family has been here over a hundred years. He is a degreed geologist and worked in the mine business for 25 years. There was a lot of misinformation going on around here. When he hears people say that mining claims were designed for mining only there are all kinds of uses given to owners of patented mining claims and those owners have a right to enjoy their property because they were given a deed from the Secretary of the Interior for that property. He owned lots in Ouray for 30 years. He lived on a mining claim. Most of north Ouray is on mining claims. He was a member of the Ouray County Planning Commission for 15 years from 1985 to 2000. He was part of a lot of history regarding the master plan. They did long hard studies that involved multiple meetings, many years to develop regulations that we have today. He was unnerved by the Board saying that they didn't know what to do when people approached them wanting to develop mining claims in the Alpine Zone. They had regulations for 15 years. We have geohazards, a united building code that everyone has to abide by, they have road standards which he helped to develop, they have septic standards that he helped to develop… *[Time was called.]*

**Dennis Reece:** The controls in place now are adequate. We don't need additional controls. People who own mining property or any other property have equal rights. If you do change the current regulations on mining claims you should notify all of the property owners in writing who don't live here. They should have a chance for input.

**Dave Calhoon:** He wanted to clear things up. He was involved in writing these regulations in 1971 and 1986. Old codgers in the county in 1971 said Log Hill was a good place for a subdivision. It's hotter than hell in the summer, colder than hell in the winter, and you can't grow anything there. His problem was the same as others here -- private property rights. You wouldn't want people driving over your land or camping on it or going to the toilet there. They put up with it for quite some time. They let the City and other groups use their mining claims but they carry liability insurance so the property was protected. That's one of the problems with the Trail Group. What they are doing is nice but they are crossing private property and he wondered if they had written, signed easements to cross it. Do they have liability insurance to protect the landowner? *[Time was called.]*

**Scott Williams:** He lived in Ridgway and wanted to address the question of takings. First, it was much more likely that well-crafted rules for building in sensitive areas would increase rather than decrease property values. Even if property values were reduced it didn't mean takings under the law. No one has an absolute right to use his property in a way that harms the community or his neighbor's property. Protection of public health and safety, historic resources and trails, watersheds in environmentally sensitive areas, scenic vistas, etc. are vitally important. The courts have said that a reduction in the property value did not result in a taking. All that is required is that regulations do not take away all reasonable economic use. The current draft does not even come close to doing that. The best voice on this issue was not his or those opposed to any regulations but you have a smart and cautious County Attorney who has worked hard to craft rules that are well within the bounds of the law and it is her voice that you should listen to. Not plowing new ground here. Other Colorado counties facing the same issues have adopted far more restrictive regulations than what is proposed for this county. Those regulations are still on the books. Supported going ahead with the regulations.

**Ron Williams:** He lives in Montrose but has property in Ouray. He basically said the same as Dave Calhoon. People move here and don't like where they came from and the way they run things but they want to change things to be like where they came from. If you don't like it, the road is wide open.

**Bob Risch:** He is the Mayor of Ouray and Chairman of the Red Mountain Project (RMP) for the last 10 years. He was concerned and, based on the experiences of the RMP, there is a train wreck coming that we are not ready for and it has to do with taxes. Over the last ten years mining claims taxes went from $40 an acre to $400 to $1,000. The next step is going to be market value. That's going to hurt a lot of people. Through the RMP he got to know a lot of claim owners who have beautiful claims with a road through it that are imminently developable. The last thing in the minds of these owners is to develop it. They have inherited it and have kept it as open space. They are on the thin edge of being able to afford that $1,000 an acre. If it goes to market value these claims will go on the market and at fire sale prices. Not ready for that as a community. There are a lot of folks who would like to do what was suggested that if they want to keep it in the public domain they need to acquire it or otherwise preserve it but they are not in the position to do that now, it will take some time. There also needs to be other options such as transferrable development rights, a right for people to exchange the land, there are many possibilities but what we need is another task force, another group comprised of mining claim owners, .miners, representatives from land trusts, lawyers… *[Time was called.]*

**Eli Doose:** He was born and raised here and owned land in the town and mining claims. The current regulations the County is trying to pass is not in anyone's best interest. If those regulations were in place anywhere else in the county none of you people would have moved here or built here. Saying that this is going to be extremely restricted here because it looks better than your land is not right. The mining claim owners take care of the land and obviously you appreciate how they take care of the land. He recommended that they just leave things alone and let the people who own the land take care of it themselves.

**Antonio Marra:** He lives in Ridgway. He would like tighter restrictions on growth but more intelligent restrictions. There is a lot of room for improvement although you've done a tremendous job. He cited an example where there was an intent to undermine the regulations that exist. The idea that the grade at which you build your road should go from 12% to 20% is a ridiculous idea. You cannot maintain a road at anything above 12%, or 10%. With all due respect to those who bandied about the 20% he would suggest that they rethink that, it's not possible.

**Barbara Seelye:** She lives in Ridgway and supported the BOCC's interest in looking at tighter regulations. To the Mayor's comment, the $1,000 an acre is not at market value, it may need to be done in a smart manner but that needs to be addressed. Why just in the Alpine Zone? Commissioner Albritton replied that the pressure has been in the southern Alpine Zone.

**Craig Fetterolf:** He is a taxpayer in the county who pays taxes on his residential property at the rate assessed by the County. A mining claim does not. He hears all of these people saying they will build on it someday if they can't find any gold or minerals. Why aren't they paying the same assessed value as he is? His private property rights are such that he gets to pay taxes on a residential property. If they aren't mining it, shouldn't they be paying for it as a residential property? That's an issue and there needs to be new regulations regarding that. Otherwise, they have their cake and are eating it too. It's a burden for all but the mining claim owners. He thanked the BOCC for what they have done tonight. The graphics were phenomenal. He came from a county where you would never see 200 people in attendance no matter what the issue was. He applauded all who showed up. That's what government in the U.S. is all about – to let "them" know.

**Helen Gebhard:** Passed.

**Jon Esty:** He lives in Ridgway. The appearance of a neighborhood, community or county doesn't happen by accident. There is usually some form of regulation that the citizenry agree upon as to how they want it to look. We are blessed with many natural features in Ouray County and a quality of life that we want to maintain for ourselves and for future generations. That was why he supported the Land Use Code in the South Alpine Zone to ensure that the attractiveness and environmental sensitivity of the area is protect and preserved while providing an opportunity for landowners to construct homes on their property if they choose to do so. We all benefit when development is done carefully and thoughtfully.

**Ron "Bumper" Williams:** He was born and raised in Ouray. He worked all over the world. We are so regulated here we don't need any more rules. He was totally opposed to this. We have enough regulations.

**Judy Wolford:** She lives outside of Ridgway and owns Trussco in Montrose. The bulk of their business is in Montrose and points beyond. She remembered a county in Colorado about 15 years ago going through a similar situation and moratorium. One thing the Planning Commission was looking at was mining claims. The proposal required 800 sq. ft. buildings. The Planning Commission got chewed up at a public hearing. The end result was that at the Commissioner

level the proposal was denied. She was speaking about Ouray County. That was 15 years ago. From that day to this, two houses have been built up there that are evidently setting the world on fire… *[Time was called.]*

**Joe Calhoon:** His grandmother moved to this valley 100 years ago from Italy. His grandfather worked and lived at the mines. Architecture in the high country never bothered his ancestors or him. He felt that we have good regulations now. He is against regulations but wouldn't mind tightening up a few trouble spots and enforce it. Mining claims should be protected and Risch addressed it well. There are ways to do it. They should be purchased by groups, etc. The majority of the claims cannot be built on because of the terrain and avalanche danger, access. Many of the claims are suitable for development. There is a big diversity of claims and one regulation will not fit all claims. He was opposed to the new regulations.

**Jane Nash:** She is from Ridgway. She and her husband support the efforts made to get to this evening. It was a well-presented program and she appreciated the environment of civility to all come together. She supported regulations on mining claims. She read from a letter from Walt Rule, "Our Land Use Code is what controls, maintains and preserves the values that sustain us, whether tourism, water, or local economies based on them. We need to carefully construct and enforce this Code. It is imperative that we get this right. The short-term profits in either land sales or exploitative mining claims can spell long-term disaster to our communities, our water and our scenic attractions. As a previous District Ranger for the U.S. Forest Service on the Ouray District from 1968 to 1977 I have seen what has happened over the past 40 years and I am worried that these short-term profiteers will have long-term and negative effects on this county. Please stick by your guns to preserve our mountains and their many values."

**Howard Greene:** Most of the points have been made. Thanks for the incredible presentation and hard work in identifying the problems. He continued to be amazed by how many people think this is a taking away of property rights. The way this is being framed is inaccurate. There are regulations. They identify problems and show us that they are inadequate to stop the kinds of expenses and problems that we face and this is simply an effort, a very reasonable effort, to modify the existing regulations to make them more effective in preventing the kinds of expenses that Bob Risch pointed out and other issues that need to be addressed.

**Rein van West:** He lives in Ridgway. He and his wife feel that the South Alpine Zone is very deserving of such regulations. Not having the regulations lacks sensitivity to the County's core attributes and denies what decades of science and experience have demonstrated would be best applied to this zone to protect it. He feels fortunate to live in a county where the public officials are aware of the hazards posed by non-regulation of this issue. They suggest that some of the more stringent alpine zone development measures enacted by other counties would be very reasonable for our county's consideration, as well. In another hundred years our present actions may not appear as visionary as they might appear today. They support the county officials with the obligation they have in establishing a level of regulatory protection in our Alpine Zone that will continue to make Ouray County the envy of best management practices everywhere else.

**Joe Ryan:** He has owned a business here for 23 years and thanked all for coming tonight. He has a unique background where he tamped powder and cap underground from 1971 to 1979. You can be a miner such as he was in his past and still be for preserving the scenic qualities of our area. He has spent more time on foot in these mountains in the past 24 years than anyone in the room hands down by the nature of his work. He has seen the change that has occurred here. Bob Risch made a salient point that the changes about to come here will blow everyone away if we do not get a handle on it now and try to preserve. There are a lot of reasons why you came here and want to be here whether you came last year or your family came here 125 years ago but we are all here right now. He wanted to commend the Commissioners for standing up and making this an important part of their job description these days. Please stay away from the political separation on these issues. Preserve what you have here and do your jobs.

**Dave Nix:** Certainly in favor of the proposed regulations as they are now. Heard a great deal about private property rights but there are also public property rights and obligations.

**Christy Orvis:** She and her husband own a couple of small businesses that employ many Ouray County residents. They are ranchers and run a meat processing operation and a hot springs. They own several properties in the Alpine Zone that they are currently exploring for economic minerals. She understands that some people want to preserve the views of the alpine zones. She still enjoys the views. She enjoys seeing the houses, the mines and the remnants of human activity and productivity that the Alpine Zone has to offer. Before passing such sweeping rezoning and regulation of private property, the County and the community should make sure that there is a need for more regulation. The County should commission a study, get funds from the state or federal government, to determine the actual build-out potential in the Alpine Zone. She did not think that it was as bad as people had whipped it up to be. She did not think that Dr. Gillum's house was offensive and she knew a lot of people who felt the same. If the state ever comes back with a need then create a volunteer program to buy up the development rights on this private property. Let's not regulate them into oblivion. Please do not move this legislation forward. She asked all of those against the proposal to stand.

**Jack Petruccelli:** He was asked to speak for Jim Rollans, a property owner in Ouray County for over 30 years. Mr. Rollans has personally been involved in four different conservation easements and one on commercial property in Ridgway that he turned around and donated to the town for public use. Mr. Rollans has ownership in mining claims and is concerned about the proposed regulation. He was not in favor of it and considered the zoning change a personal property rights takings.

**Andy Mueller:** He lives in Ridgway and owns property in Ridgway and Ouray. He is an attorney and a citizen. He is opposed to the regulations. The current regulations are fully satisfactory to protect the public interest. They were designed with the alpine area in mind. There was talk about studying geohazards and avalanches. That's not something that was talked about in the valley before. John Trujillo was right, this is not a new issue or an issue that hasn't been thought about or legislated before. The most important thing is that 218 families own these 1,300 claims, according to the Assessor's records, and many are local families and many pay taxes and, yes, their taxes are going up. He did not think,

and he represented many of them, that they were about to sell. They pay their taxes and are happy to pay their taxes. But the issue has to do with regulatory costs, the costs of people who own claims and the costs of people who the pays taxes to the County. The County has one Land Use Staff member right now. Despite his best efforts he couldn't get the different drafts of these regulations out to the public so that they could assimilate them. How will he enforce this 14-page regulation as it comes through? How will the landowners pay five or six different experts before they can even start building their house? Pitkin County, Summit County, Eagle County – these are counties that have the most expensive costs of living. We are going to price our local families out of here and what we will end up with will be only the rich and wealthy who come from outside. And that's who's going to build these houses and that's who will fight the County on these regulations. Please don't… *[Time was called.]*

**Jack Clark Jr.:** He was born and raised here. He wanted to reiterate something that was brought up earlier regarding emergency services. He lived in Silverton in the past few years. The way they get around it there, people who build in the alpine areas sign an affidavit with the County that eliminates the County from any liability. We are regulated to *[?]* around here. There is a group in DC that makes everything a big emergency and gets everyone freaked out to vote on it. That seems to be what this is about. You're not going to have all of these people building houses up here. It's too expensive for one thing. They haven't held onto these claims all of their lives, over a hundred years, just to have someone tell them they can't do anything on them. He was totally against the proposal.

**Cheryl Taylor:** She was born and raised in Ouray and continued to live in Ouray County. She is the 4th generation of the Fellin family to live in Ouray and the 3rd generation of the Fellin family to own property in the Dexter Creek area that have active mining claims on them. She is against discrimination of a particular group of taxpayers and, yes, her family has paid taxes on these properties for many years. Those who want to change her county forget that mining made Ouray. It also made all of the high country roads that allowed people to enjoy the land. And where do you think the miners lived in these remote areas? Well, in houses. When you choose a place to live you live with the consequences surrounding you whether it's EMS availability or the fire department. The current proposals in her opinion were all assuming that mining claim owners were out to destroy the area. They love the land as much if not more than the newcomers. She just wondered… perhaps we are headed so all of the tree-hugger people could trespass on my land at their will not mine.

**Ralph Risch:** It is worth remembering when you look at the souvenir shops in town or online and you see photos of these alpine areas that these are the reasons why tourists come to Ouray. No one wants unreasonable regulations. He was surprised to hear that mining claims have less regulation than in other zones. *[Commissioner Albritton corrected him.]* They also paid less tax. He hoped the Commissioners continued forward with this. There should be a reasonable compromise to protect the interest of everyone. He commended them for taking on a problem that was so contentious.

**Sheelagh Williams:** She thanked the BOCC, Staff and the Planning Commission for the process. She quoted from some of the letters that came in. Alan Staehle, former County Commissioner, said that he included home building as a use by right in the Alpine Zone and that was a mistake even though he voted for it at the time. He also said that in terms of an effective way to reduce the impact on economics, wildlife and tourism would be to add building size limitations and maybe measure the McIntyre cabin at the Museum to use as a footprint. It was a pretty upscale cabin in its day. And, "by restricting development, you will be helping to protect mining since there would be no end of problems for mines with a housing development next door." The other letter was from business owners Jill Markey and Leif Juell with Alternative Power Enterprises. These are people who would make money from construction in the Alpine Zone. They are in support of additional regulations because they have worked on houses in alpine zones in Silverton and they see the impacts of those in terms of dangerous roads, erosion and construction impacts and then the homes sit empty. Someone pointed out earlier that you should live up there in a yurt for a year rather than end up with a trophy home that just sits up there empty. She had another letter from Randy and Jan Sherrett with Peak to Peak Bicycles in Ridgway and residents of Ouray County who support regional regulation… *[Time was called.]*

**Jennifer Parker:** She has lived in Ridgway for three years. She greatly appreciates what they have. She brought a map with tacks in it. She put 100 tacks in the map, indicating the worst case scenario. She believed that there were very many responsible mining claim owners. Stricter regulation on mining claims may not be necessary for them but she worried about what was coming. This type of building *[the scenario presented on her map]* will dramatically affect the fragile alpine environment. She could not imagine leaving that as our legacy to our children and our children's children. The use of these small lots that were intended for mining for residential purposes must be strictly regulated if this treasure is to be preserved. She supported reasonable regulations in the proposed South Alpine Zone.

**Randy Gillum:** He represented the owners of Verizon Ranch who own 115 mining claims north of town. His four sons own Verizon Ranch and they bought that property specifically for the building sites. There are 5 building sites on 1,000 acres representing a density of 1 building site per 200 acres. Surely that's low density. On the tax issue, the tax at $1,000 an acre base is almost twice what they have invested in the property so they are paying their fair share of taxes. And, they are very well regulated.

**Ben Crosby:** He is with Mt. Sneffels Mining whose claims are in the Yankee Boy Basin. He thought they might be the only production mine in the county. They were comfortable operating under the federal mining laws that regulated them. He heard that people were wanting to help protect mining. The Mining Law of 1872 is very powerful and would protect them. His concern is the rights of his neighbors and to that end he would speak against the regulations.

**Steve Duce:** He has lived in Ouray County for 30 something years. Everyone has a concern. He has seen a lot of changes. Ninety-five percent of the mining claims will not be built on. Bob Risch hit it on the head, too. If you want to ensure that someone doesn't build on the property and impact your view, you purchase it. He was against any more regulations.

**Mike Hockersmith:** There's been an argument that somehow the County could be subjecting itself to liability even if you had people signing a statement saying that there's no possibility that any sort of emergency medical services or fire, or Sheriff, if you get in trouble you will not… That does work. In his experience the County just like any other political

subdivision in the state of Colorado enjoys the protections of the governmental immunity act that says that the County is immune from suit other than exceptions. Last time he heard, failure of an ambulance to get up to a mining claim is not one of those exceptions. Secondly, he suggested that he used to believe that regulation was the way to go. Look at the most highly-regulated counties in the state and look at the huge houses that are built there. The only county that has actually succeeded in meeting the kinds of concerns that have been addressed tonight was Boulder County, and what Boulder County did was buy it.

**Karen Avery:** She owns a tourism business in Ouray. She appreciated everyone's concern. She personally would like to go along with the task force idea and involve the mining claim owners, tourism and business owners, and concerned citizens, and hash through where we think we have problems. It is clear that mining claims are not overly developed, yet, but… that's yet. It's not horrible to think that going forward you might want to look at it.

Carl Dismant: He has lived here since 1961 with ownership in the county since 1947. He owns the Bachelor Mine that has a mining tour in it. He has a mining reclamation permit from the State of Colorado and that is not easy to maintain. You cannot cross federal land without an enormous amount of work. Some people do it but it can be very costly. We have tried to regulate this for a long time and there needs to be a balance. Ouray County is rich in mineral resources, both high-grade and low-grade. The high-grade is in a transition period right now. There's a lot of low-grade between here and there. If we don't start developing it, there are people in this world who would love to develop it. We don't want to see that kind of development. You need to utilize the rules and regulations you have. $1,000 an acre is terribly expensive because mining claims sit… He counseled reason and looking to the future. We need young people in the county to man the schools, to have a fire department, things like that.

**9:16 Commissioner Albritton closed the meeting.**

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS
OURAY, COLORADO

ATTEST:

_____
Heidi M. Albritton, Chair

_____
K. Keith Meinert, Vice-Chair

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

_____
Lynn M. Padgett, Commission Member

## 30.4 ROAD AND DRIVEWAY IMPROVEMENT AND MAINTENANCE LIMITATIONS

The intention of these Road and Driveway Improvement and Maintenance Limitations is to retain the primitive character of Ouray County Roads in the Zone. Property owners should understand that Ouray County will not provide increased winter maintenance on Ouray County Roads within the Zone except in accordance with recognized Ouray County Road and Bridge policies. Property owners should not expect an expansion of services in the Zone as a result of residential development. In many cases, "over-the-snow" means of transportation may be the only means of accessing properties in the Zone in the winter months. Notwithstanding any other provisions contained in Section 23 of the Ouray County Land Use Code ("Code") pertaining to Road Standards, the following regulations and restrictions shall apply in the Zone:

A. Maintenance of Existing Roads: Maintenance of existing roads and driveways may be allowed, provided such maintenance activity occurs within the existing road alignment. Road realignments may be allowed in certain cases if the County Engineer determines that the realignment would more effectively mitigate potential impacts (e.g. erosion, wetland protection). Access easements or evidence of the right to cross private property and/or National Forest System lands must be provided for any road realignments. An Applicant shall provide information with the Site Development Permit application detailing the proposed maintenance on an existing road or driveway and approval of such maintenance will be required as part of the Site Development Permit process.

B. Winter Maintenance: Except as otherwise provided herein, all winter plowing of roads and driveways in the Zone (between approximately November 1 and April 30), shall be prohibited. In those instances where a Ouray County Road is plowed to a point that intersects with a private driveway (used exclusively to provide access to a single residence), such driveway may be plowed by the property owner, provided that such plowing shall not interfere with access or drainage on the County Road and plowing across a County Road shall be prohibited. A request for an exception to these Winter Maintenance restrictions may be made by an Applicant making such request through the Variance process described below.

C. Construction of New Road and Driveway Improvements:

1. Construction of new roads and improvements to existing roads, within the Zone shall be prohibited.

2. Construction of new driveways and bridge/stream crossings may be allowed, provided there is no existing access to the property that has been determined to be adequate by the County Engineer and provided that the

new driveway or bridge/stream crossing complies with the standards and site disturbance/design standards set out in this Section. The following standards shall apply to the construction of any new driveway in the Zone:

a. Driveways in the Zone will be permitted on an owner's property to access a building site only in those instances where a property abuts an Ouray County Road, U.S. Forest Service Road (if all required permits have been obtained) or other established road. An Applicant shall be required to submit information to Ouray County as part of the Site Development Plan approval process, including drawings, specifications and proposed construction methods. Permission to construct a new driveway may be denied or modified where drainage, erosion, topographic or other issues that cannot be safely mitigated exist. Appeals from an administrative decision to deny a new driveway may be made according to the provisions of Section 19.7 of this Code.

b. If an owner has multiple properties or mining claims, a driveway across multiple mining claims will be allowed only if the property owner agrees that title to such affected properties will merge to create a single parcel and records an appropriate document or documents to reflect such merger. Thereafter, no further development shall be allowed on the affected parcels and such parcels may no longer be transferred or conveyed separately.

c. Generally, grades shall not exceed twelve (12) percent. Driveways that will exceed a twelve (12) percent grade may be allowed through the Variance process described below and provided that all other standards set forth in the Code are met. As part of the Variance process, the Applicant shall be required to provide Ouray County with designs, drawings and specifications stamped by a Colorado registered Professional Engineer for such driveway. The County Engineer shall review such designs, drawings and specifications and approve the design or make other recommendations. The cost of such review shall be borne by the Applicant. Any driveway that exceeds a twelve (12) percent grade shall minimize environmental impacts and shall not create a hazardous and unsafe condition for vehicles or other persons. In no event may any grade exceed fifteen (15) percent.

d. Driveways shall be no more than twelve feet in width; however, vehicle pullouts may be required where it is deemed necessary for the safety of vehicles on the driveway.

e. Switchbacks and cuts and fills shall be minimized.

f. Driveways may not be paved or improved with any other impervious, non-native materials. Driveway surfaces shall be constructed utilizing local, native materials.

g. Provided that the criteria set forth in paragraph 30.4.C.2.a are met, driveways to serve multiple parcels are encouraged where it is shown that doing so will reduce the potential number of driveways and minimize the overall aesthetic and environmental impacts in the Zone.

h. Construction of parking areas may be required in order to accommodate the anticipated traffic on a driveway and to ensure that no vehicles use an Ouray County Road, U.S. Forest Service Road or other established road for parking.

i. Appropriate drainage will be required in the construction of the driveway to ensure that existing drainage patterns are maintained and that excess runoff does not affect Ouray County Roads, U.S. Forest Service Roads or other established roads adjacent to the new driveway.

D. Driveways should be located and constructed in a manner that reduces site disturbance and visibility of the road or driveway from neighboring properties or roadways.

E. Improvements to existing roads and driveways or new driveways that do not meet the standards and conditions set forth herein shall be prohibited.

F. Property owners are advised that emergency vehicle access to properties within the Zone may be limited or impossible.

## 30.5 DEVELOPMENT STANDARDS

A. Structure/Dwelling size:

1. Base Allowance: A total base allowance of 750 square feet of "footprint" shall be allowed for a dwelling unit and accessory structures within the Zone on parcels of two acres or less. No accessory dwelling units shall be permitted.

2. Additional Allowance: For each additional acre of land included within the proposed parcel, in excess of two (2) acres, the total footprint may be increased by an additional 100 square feet, up to a maximum of 2500 square feet of footprint for the total acreage. In no event may the total square footage on any parcel exceed 7500 square feet for all uses, dwelling units or accessory structures. The Applicant will be required to supply documentation of ownership and a vicinity map at the time of application in order to obtain additional square

footage. Contiguous parcels that are utilized by an Applicant to obtain additional square footage must be restricted from further development by the recording of an appropriate restriction, at the Applicant's expense, at the time that a Certificate of Occupancy is issued.

3. Remodels: Exterior remodels of dwelling units, reconstruction or expansion of dwelling units within the Zone shall be required to comply with the provisions of these regulations.

B. Height:

1. The maximum height of buildings or structures within the Zone shall be twenty-five (25) feet for single-family residential dwellings and twenty (20) feet for a detached accessory structure.

2. The height of principal and accessory structures shall be measured to the top of ridge or to the top of the parapet surface of a flat roof, as measured from the existing or finished grade, whichever is lower.

## 30.6 ACCESS

**A.** When an existing road or driveway crosses private property, an Applicant shall obtain all necessary easements, licenses or approvals related to such access, and, if deemed necessary by the County, the Applicant may be required to dedicate necessary rights-of-way related to such access to the County.

B. Notwithstanding the foregoing, if an Applicant is unable to secure such rights of access despite appropriate, diligent efforts to accomplish the same, the County may, in the exercise of its sole discretion, recognize claimed, established historic access and allow the development in the Zone. In such instance, the Applicant shall provide an appropriate combination of the following: 1) bona fide affidavits describing prescriptive use of the road or driveway that crosses private lands and/or other forms of tangible, demonstrative evidence regarding the claimed historic use; 2) where an existing road is used to access a property and such road crosses National Forest System lands, evidence of a special use permit, an express acknowledgement or allowance of access from the United States Forest Service ("USFS") or other appropriate demonstration of a legal right to cross such National Forest System lands shall be required. Applicants should recognize that roads on which a prescriptive right is claimed may be closed to use by other property owners and Ouray County is under no obligation to defend such access.

**C.** Public access to existing trails and roads shall be preserved. Owners shall not interfere with public access on existing historic roads and trails and such access should be preserved to the maximum extent possible for both summer and winter use. Historic trails and roads shall be kept in their existing alignments

whenever possible and road and driveway crossings of existing trails and roads should be avoided whenever possible. An Applicant may make a proposal to provide a substitute or alternate trail or road access using the Variance process described below.

## 30.7 ACTIVITY ENVELOPE

**A.** Activities on a parcel in the Zone shall be constrained to a designated "Activity Envelope", to be identified during the Site Development Permit process by the Applicant and Ouray County Land Use Staff. In general, the defined Activity Envelope for development of primary uses shall be large enough to accommodate the proposed principal use of the property and traditional permitted accessory structures and infrastructure (septic and other utility systems as allowed) but should not be significantly larger than the area needed for such development and in no case shall the Activity Envelope exceed one-half acre in size. Driveways may be excluded from the area of the Activity Envelope

B. Location of the Activity Envelope shall take into account steep and potentially unstable slopes and avalanche areas; water courses, drainage channels and areas prone to erosion; floodplain hazard areas, geological hazard areas; moderate to severe wildfire hazard areas; wildlife habitat areas; river and stream corridors and wetlands; historic preservation areas or archeological resource areas and areas of public access. To the extent possible, the Activity Envelope shall be located outside of the aforementioned areas. Once the Activity Envelope has been defined, the Applicant shall stake the area in a manner to allow identification of the Activity Envelope throughout the building process. Applicants should be aware that the identification of an Activity Envelope does not ensure that activities within the Activity Envelope are safe and without hazard.

C. Wildlife Habitat Areas.

1. Care shall be taken to locate the Activity Envelope to avoid wildlife habitat areas such as wetlands, riparian areas, wildlife migration corridors or habitat and wildlife birthing or calving areas. In delineating an Activity Envelope, consideration of connectivity between other parcels and the cumulative effect of the proposed activity or development in light of other activity in the area shall be considered. The following guidelines shall control the identification of Activity Envelopes:

    a. Maintain large, intact areas of native vegetation and habitat area by preventing fragmentation by development;
    b. Protect rare landscape elements such as locally rare vegetation, unique rock formations, sheltered draws or drainage ways, or other similar features and guide development towards areas of landscape containing more common elements;

c. Maintain connections among wildlife habitats by identifying and protecting corridors for movement;

d. Minimize the combined and cumulative effects of activities and development on wildlife species, wildlife movement and unique landscape elements.

D. Steep and Potentially Unstable Slopes.

1. The following provisions shall apply whenever steep slopes or potentially unstable slopes occur within the Activity Envelope.

a. The Site Development Permit application shall delineate slopes within the Activity Envelope with two (2) foot contour intervals. Slopes between each two foot contour in each of the following categories shall be designated by a distinct graphic pattern:

(i) Slopes that are fifteen (15) percent or greater but less than thirty (30) percent;

(ii) Slopes that are thirty (30) percent or greater but less than forty-five (45) percent;

(iii) Slopes that are forty-five (45) percent or greater.

b. Development is prohibited on slopes with a slope gradient of forty-five (45) percent or more. On thirty (30) percent or greater slopes, but less than forty-five (45) percent, Applicant shall be required to submit reports and certifications from an engineer and/or geologist licensed in the State of Colorado to demonstrate that there is no hazard posed by the location of development on such slopes. Applicant shall be required to comply with the recommendations or mitigation measures that may be described in such reports.

E. Once an Activity Envelope has been defined, the natural grade, topography, vegetation and drainage of areas outside the Activity Envelope shall not be disturbed. Prior to any development activity on the parcel, the boundaries of the Activity Envelope shall be identified with construction fencing and such fencing shall remain in place until all development has been completed.

F. An Applicant may request approval for a larger Activity Envelope or approval to conduct activities outside of the Activity Envelope in accordance with the Variance procedures set forth below.

## 30.8 <u>SITE DISTURBANCE</u>

A. **Site Disturbance and Vegetation Removal**:

1. Clearing, grading or grubbing that exceeds twenty-five (25) cubic yards, exceeds 500 square feet of surface area or changes the natural drainage of

the site shall occur only after an Activity Envelope has been defined and a Site Development Permit issued by the Land Use Department. Applicant shall provide evidence that all applicable local, state and federal permits have been obtained prior to any such work commencing. All proposed earth-disturbing work or vegetation removal shall be detailed in the Site Development Permit application and shall be completed in accordance with such plans.

2. Development, including structures, roads or driveways, leach fields and other utilities, shall minimize the need for earth-moving and site disturbance to the maximum extent possible.

3. Within a reasonable period of time, all areas of surface disturbance, excluding the travel surface of driveways, shall be re-vegetated with species native to the site and/or the surrounding area. The property owner shall be responsible for controlling and removal of all noxious or invasive plant species on the property in accordance with the Colorado Noxious Weed Management Act and Ouray County regulations. The Applicant may be required to coordinate with the Ouray County Weed Manager to develop an acceptable revegetation/weed mitigation plan.

**B.** **Utilities**: Utilities shall be installed underground (below access roads or driveways) unless the Applicant can demonstrate to the satisfaction of the Land Use Department that other alternatives for placement of utilities would have less impact. Provided, however, that if primary utility service lines already exist within two hundred (200) feet of the Applicant's property boundary, an extension of such line(s) may be overhead. Property owners in the Zone should realize that solar, wind or other alternatives to the extension of utility lines may be the only viable utility service available. Such alternative utility sources should be described in the Site Development Permit application. Applicant shall be required to satisfactorily revegetate and remediate all ground disturbances, both on-site and off-site, that occur as a result of such utility installation and failure to do so may result in revocation of permits or withholding of permits by the Land Use Department.

**C.** **Streams/Water Bodies/Wetlands**: All soil disturbance and buildings and structures shall be set back a minimum of one hundred (100) feet from any stream, water body or wetland and shall meet all other federal, state or local requirements.

**D.** **Tree Removal**: It is recognized that it is often necessary and appropriate for property owners to conduct selective felling and/or thinning of trees for forest health or wildfire mitigation. It will be important for an Applicant to assess and balance the relationship between the natural vegetation on a property and its potential geohazards, other unique

characteristics and the location of the property in considering tree removal within the Zone. No tree removal shall be allowed outside of the Activity Envelope except for necessary fire mitigation or forest management.

## 30.9 DESIGN STANDARDS

A. **Building Materials/Colors:** Primary building materials and colors, including materials used for accessory structures shall mimic and blend with those found in the surrounding natural landscape. Use of wood, stone and other natural looking materials is encouraged. Colors shall be earth-tone, dark and/or subdued. The Applicant is encouraged to provide a color board to the Land Use Department showing proposed colors as part of the Site Development Permit application. At the time that a building permit application is submitted, the Applicant shall confirm the colors to be used and such colors shall be approved by the Land Use Department/Building Official prior to approval of a building permit. Highly reflective glass or metal surfaces are prohibited (with the exception of solar energy systems) and instead the use of non-reflective glass or metal surfaces is encouraged. Fire retardant materials will be allowed provided that the materials have a natural appearance and are approved by the Land Use Department during the Site Development Permit review process.

B. **Fencing:** Permanent fencing is strongly discouraged; however, any fence is encouraged to comply with the Colorado Division of Wildlife standards for wildlife friendly fencing. Fences outside of the Activity Envelope shall be prohibited. If fences are constructed on properties within the Zone, such fences must be well maintained and not allowed to create a nuisance for the public or wildlife. No fence shall be permitted to impede passage on public trails or roads, however, in some instances the utilization of unlocked gates and/or fence crossings may be allowed.

C. **Lighting:** In keeping with the purpose and intent of this Section, outside lighting shall be minimized and all outside lighting shall comply with the provisions of Section 27 of this Code, "Outdoor Lighting Regulations".

D. **Fire Mitigation**: All development shall comply with the requirements of Section 24 of this Code, "Wildfire Mitigation".

E. **Geologic, Mining and Environmental Hazards**: Parcels or areas that are subject to geologic hazards shall not be developed for any use that might endanger life, safety or property unless such hazards can be mitigated in a manner acceptable to Ouray County. Geologic hazards include, but are not limited to: avalanches, landslides, rock fall, mud flow, unstable slopes or soils, ground subsidence, radioactivity or other environmental hazards such as adits or mine shafts due to historic mining activity on such parcel.

If there is evidence that geologic hazards exist on the site, a geotechnical report prepared by an engineer or geologist licensed in the State of Colorado shall be submitted by the Applicant with the Site Development Permit application. Such report shall detail the hazards on the site and the proposed mitigation techniques that will alleviate the dangers or hazards of building on such parcel. Such report shall include all mitigation measures relative to the perceived hazards or dangers, including both the proposed structure(s) as well as the site itself (e.g. engineered foundation and stabilization measures on the property itself). No construction on such site will be allowed except in compliance with such mitigation measures. If it is not possible to mitigate the hazards or dangers on a particular parcel, the proposed development may be prohibited.

F. **Historic Structures**: Historic properties are irreplaceable assets of a community. Once demolished they are forever gone and cannot be replaced. It is the intent of this section to encourage the preservation and protection of historic and architectural resources in Ouray County that have a demonstrated significance to Ouray County. A demolition permit issued by Ouray County is required prior to the demolition of any structure designated as a historic landmark or that is greater than 50 years of age.

G. **Visual Impact**: The requirements of Section 9 of the Code, "Visual Impact Regulations" shall apply in the Zone for all structures proposed that are visible from or within 2 miles of the centerline of any Ouray County Road, U. S. Forest Service Road or from U.S. Highway 550. All new structures within the Zone shall be setback a minimum of at least one hundred (100) feet from any Ouray County Road, U.S. Forest Service Road or from the centerline of U.S. Highway 550.

I. **Water Supply:** An adequate potable water supply shall be provided.

J. **Sewage Disposal:** A means of sewage disposal that minimizes site disturbance and complies with all Colorado Department of Public Health and Environment regulations for individual sewage disposal systems as well as any local requirements shall be required. Alternative systems such as composting toilets, incinerator toilets, grey water systems, etc. may be utilized. Depending on site conditions, an engineered system may be required.

K. **Small Scale Renewable Energy Systems:**

1. As a means of providing renewable energy, the installation of small scale renewable energy systems for residential use is encouraged in the Zone. "Small scale renewable energy systems" are those intended to be installed on an individual property and used to provide energy for the

principal use established on the property. Small scale renewable energy systems include small windmills or turbines not over twenty-five (25) feet in height and private solar energy systems. Small scale renewable energy systems that are incidental and subordinate to a principal use and located on a property shall be permitted as a use by right in the Zone. Other types of renewable energy systems may be permitted through the Special Use Permit process.

2. **Installation**. When small scale renewable energy systems are installed on private properties within the Zone, the systems shall be designed and placed in a manner that a) exhibits environmental sensitivity and b) satisfactorily minimizes impacts to the backcountry character and resources in the Zone. Significant site grading shall be avoided in the installation and location of such renewable energy systems. The design of such renewable energy systems shall be described in the Site Development permit application and shall be reviewed on a case-by case basis. All such renewable energy systems shall be located within the Activity Envelope. No small scale renewable energy systems may be installed on any property until all necessary permits have been obtained from Ouray County.

3. **Solar Energy Systems**. In addition to the guidelines set forth above, the following considerations shall guide the installation of solar energy systems on properties within the Zone. The installation of solar energy systems for uses other than residential and accessory uses on site shall be considered a utility and shall require a Special Use Permit. While recognizing solar strategies to optimize placement and performance of solar panels and associated equipment, the following standards shall be addressed in the design and installation of solar energy systems:

a. **Integrated Installations.** It is preferred that solar be integrated into the design and construction of a new building, to the extent feasible.

b. **Location of Separate Structures/Ground Mounting.** When solar is not integrated into the design of a building and is separate from the primary structure, issues such as location of the equipment, visual continuity and screening shall be properly addressed.

c. **Height**: Solar panels placed on roofs may not exceed the maximum permitted building height of twenty-five (25) percent and shall not be visible above the peak of the roof. Ground mounted solar panels shall not exceed twenty-five feet in height.

d. **Generators.** Sound emissions from the use of generators shall be minimized to the extent possible and shall not exceed the maximum permissible noise levels set forth at C.R.S. §25-12-103, as the same may be amended from time to time. Sound mitigation

measures may include acoustically insulated housing or cover enclosing the motor or engine; vegetative screening; acoustically insulated building enclosing the generator or other such measures.

**4. Variance.** A request for an exception to the height restrictions may be considered pursuant to the provisions for a variance set forth below. Relief may be granted if a property owner demonstrates that a functional solar energy system or wind turbine or windmill is not suitable if installed in accordance with the height limits set forth. The property owner shall demonstrate that a variance is necessary as a result of special circumstances applicable to the property such as topography, limited solar or wind access or other unique physical conditions.

## 30.10 SITE DEVELOPMENT PLAN APPROVAL

A. **Application.** All residential development in the Zone that requires a building permit, driveway permit or a septic permit or clearing, grading or grubbing in excess of the limits set forth at Section 30.8.A.1 above, "Site Disturbance and Vegetation Removal", shall require prior approval of a Site Development Permit. The application for a Site Development Permit shall comply with all of the requirements of Section 19.2 of the Code, in addition to the requirements contained in this Section. As part of the Site Development Permit application submittal, a vicinity map of the area, a boundary survey of the parcel (including any overlapping mining claims) and a topographic survey of the area proposed to be disturbed shall be included, along with all required fees. The boundary survey shall include all existing structures, trails, pipelines, ditches and other existing improvements on the property. All proposed improvements, development, grading, vegetation removal or other changes to the site shall be shown, including the proposed Activity Envelope. Any mine shafts, adits or other potential hazards shall be shown on the site plan. All Site Development Permit Applications shall require a site visit by a Land Use Department staff person. When snow or other climactic or road conditions preclude the ability to perform a site visit, the Land Use Department may extend the review period until such time that the site can be reasonably accessed and evaluated. The application for Site Development Permit approval may be referred to an outside agency or professional for review when particular, special circumstances are present that require more detailed analysis. The costs associated with any such referral shall be borne by the Applicant.

B. **Approval.** After a complete Site Development Permit application has been submitted to the Land Use Department, including any required engineering or geotechnical reports, and a site visit has been completed, Land Use Department Staff shall review all such material and either approve the application, approve with conditions or deny the application if all requirements set forth herein and in Section 19.2 cannot be met. Any decision of the Land Use Staff may be appealable by the Applicant according to the provisions of Section 19.7 of the Code.

C. **Amendment of an Approved Site Development Permit**. After a Site Development Permit has been approved, if the Applicant wishes to make changes or modifications to the location of the Activity Envelope or development to occur within the Activity Envelope or to any other approved uses as part of the approved Site Development Permit, the Applicant shall submit an application for an amendment to the Site Development Permit along with an explanation of the requested changes and any information required by the Land Use Department, along with any required fee. An additional site visit may be required depending upon the scope of the requested amendment. Once the application for amendment is complete, Land Use Department Staff shall review the application and approve, approve with conditions or deny the application if all of the requirements set forth herein and in Section 19.2 of the Code cannot be met. Any decision of the Land Use Staff may be appealable by the Applicant according to the provisions of Section 19.7 of the Code.

## 30.11 VARIANCES

A. Under certain circumstances, relief from certain provisions of these Zone regulations may be allowed by the Board of Zoning Adjustment. Such relief may be allowed only for those standards that expressly allow for such a review.

B. Requests for variances to certain provisions of the Zone regulations must be made within thirty (30) days of the occurrence of the grievance or decision that is the subject to the request for review. Applicant must submit a written request, along with the appropriate fee, to the County Planner explaining the reasons for the request, the specific provisions of these regulations that are involved, the specific relief being sought and a site plan illustrating the manner in which the variance, if granted, would affect the subject property and adjacent uses. The County Planner may request additional information if it will assist the Board of Zoning Adjustment in making a decision on the matter.

C. Requests for review shall be scheduled before the Board of Zoning Adjustment in accordance with the provisions of Section 19.7. The following criteria and findings shall generally govern the review by the Board of Zoning Adjustment:
   1. That the variance, if granted, will not diminish the value, use or enjoyment of adjacent properties.
   2. The variance, if granted, will not be directly contrary to the intent and purpose of these regulations, other provisions of the Code or the Master Plan.
   3. That special circumstances exist that make the strict application of the standards contained in these regulations inappropriate.

4. The granting of the variance is not based on the personal convenience, profit or special privilege of the Applicant.

D. Any variance granted in accordance with this provision shall expire two years from the date on which the variance is granted unless a Site Development Permit and a Building Permit have issued to the Applicant for the construction for which the variance was requested.

E. In order to ensure that the protection of the public good and the intent and purpose of these regulations is preserved, the Board of Zoning Adjustment may impose any other condition when approving a variance.

Comments on the first nine questions for the June 7, 2016 Planning Commission meeting from Patsy Miller

1) Minimum lot size of five acres should be required for a residential building permit on patented mining claims and mill sites located in the High Country of Ouray County, .

2) We need data on the number and location of patented mining and mill sites in Ouray County, After we know the number and size of patented claims above 9,500' a pattern many emerge which influence the decision on the density allowed at various locations and elevations. If there are larger parcels at elevations below timber line, open space dedications could facilitate additional dwelling units. Above timber line one unit per claim should be the standard. The same limitations should apply county wide.

3) Minimum setbacks of 25' from the property line seem to be standard for parcels not in a PUD.

4) Projects in the High Country should be designed to protects important historic and natural features of the site by locating development ~~a~~ as far away from such features as possible.

5) Developments in the Ouray High Country should not physically interfere with existing public trails and should be located to minimize their visual impact from established trails.

6) Primary access to residential development should be from existing Ouray County roads or Colorado State highways. Development requiring off road vehicle access should be prohibited. Helicopter assisted development should be discouraged (hopefully this would be prohibitively expensive).

7) High Country development must provide for on site parking. Building and residential parking should be prohibited on public County Roads.

8) All required utilities for High Country development must be under grounded or contained within structures.

9) All High Country structures must utilize materials and colors that blend with their natural environment.

Kelvin B. Kent
915 Riversage Drive
Ridgway, Colorado 81432

Ouray County Planning Commission May 21st 2016

PO Box C

Ouray CO 81427

To whom it may concern,

After attending the ROCC meeting in Ridgway on May 19th I am prompted to submit my personal views as a Ouray County citizen, author of local hiking guides, summer user of the high country/tundra zones and advocate of planning that both protects the very values that brought us here but does not end up with a draconian approach that over does the limitations imposed on current or future property owners to build a structure on land that is theirs.

I was most impressed with the County resolution #2016-018 and its thoughtful parameters as listed in Exhibit A. However I would like to suggest a few modifications and/or general comments that either appeared in this resolution or arose after discussion at the ROCC meeting.

The first comment concerns descriptions relating to elevation, tree line, alpine, tundra, high country etc. Because tree lines vary enormously in different locations and compass directions, this term should not be used. I would agree that 9,500 feet appears sensible, notwithstanding the fact that many homes/structures within Ouray county and our neighboring counties are higher than that. For example the Telluride Mountain Village and Town of Ophir are bot higher than 9,500 feet. Suggestions that this proposed elevation should be lower (like 8,000 Feet) are, in my opinion, not worthy of consideration.

In reality, 9,500 feet would, in the vast majority of cases, be "in the trees." Building above, say, 11,300 feet (which could still be in the trees) would have many other problems to contend with, but could still be OK for a small cabin type structure that could be adequately closed down in the winter although most people who would want to build, would probably like to use their cabin in the winter also. This, alone, makes operation, maintenance and access difficult.

Although I am not opposed to a 5 acre qualification, I think 10 acres would be better. Of course, the ideal would be 35 acres, like the lower zones but this would preclude many owners and probably cause a backlash of opposition.

Factors like setbacks, minimum impact, driveways, parking, protection of public trails (with guidelines for privacy, screening etc.) and blending should, in my opinion, be givens.

Driveway width is an interesting concept. 10 feet is not really wide enough for practical purposes. I would propose 14 feet.

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Building height should be limited to 20 feet but allowance for below grade construction be permissible. Lower roof heights would, in my opinion, preclude the use of a required roof pitch and severely restrict the ambiance of a mountain structure.

There should be allowances for variances. This should apply particularly to building on tundra, where a more restrictive set of parameters should be provided prior to building permit application (EG: to potential owners, builders architects and engineers.)

Realistically I think that water tanks, propane tanks generators etc. should be permitted but ONLY if shielded by an opaque fence or similar structure.

Furthermore, I think the actual design and looks of any structure at or above 9,500 feet should have a refined description as to style, rooflines, natural/historic appearance, exterior finishes and permitted storage/garage/shed facilities.

Renting is a sticky wicket! I recommend that an owner be granted permission to rent out his/her home/cabin (like Chris George does on Red Mountain) but that the county either produce or OKs the rental agreement, especially with regard to clean-up, trash disposal and numbers of people using the property.

Lastly, and I know this lies beyond the prevue of this discussion, NOISE is becoming a big factor. The County is aware of the decibel increases on the Camp Bird Mine road and the hugely increasing usage of dirt bikes, snowmobiles and ATVs. Here again, there needs to be controls but perhaps the adage of "all things in moderation" is better that trying to win with 100% and losing, rather that the concept of "70% of something is a heck of a lot better than 100% of nothing." After all, any new codes have to be approved by a majority.

Most sincerely,

Kelvin Kent

(With full concurrence of wife Becky)

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# MINUTES

# OURAY COUNTY PLANNING COMMISSION

# REGULAR MEETING & WORKSHOP

May 17, 2016 6:00 – 8:00 p.m. (appx)

Meeting held at the Land Use/Road & Bridge Offices, Conference Room

111 Mall Road, Ridgway, Colorado

**Attending:**

| | |
|---|---|
| **PC:** | Miller, Jackman, Peters, Parker, Williams, Orgren, Baskfield |
| **Staff:** | Castrodale, Sampson, Whitmore |
| **Absent:** | Carr |

**Note:** These minutes are not intended to be a *transcription* of the hearing. Comments are abbreviated and paraphrased. Every intention is made to capture the intent and meaning of the comments made during the hearing.

## I. Call to Order – Workshop of the Ouray County Planning Commission (6:02 P.M.)

1. The Planning Commission held a workshop to discuss Wildfire Regulations, and developed a record of what work had been done in order to efficiently revisit the topic after High Country Regulations had been completed.

## II. Call to Order – Regular Meeting of the Ouray County Planning Commission (7:00 P.M.)

### 1. Election of Officers

- Vice-Chair Jackman noted that he would not be interested in being nominated for Chair, due to other work obligations.
- Peters suggested that Williams be Chair
- Williams noted that she would be willing to do so, but suggested that perhaps Parker could remain in the position while the Planning Commission reviews the High Country regulations.
- **MOTION:** Jackman moved to hold elections at the 1st planning commission meeting in August
- **SECOND:** Miller seconded motion
- **DISCUSSION:** No discussion was had
- **VOTE:** A vote was taken and the motion passed unanimously

2. **Public Hearing** (Beginning at approximately 7:00 PM): The purpose of the hearing is to review and make a recommendation to the Board of County Commissioners on a proposed new Land Use Code section addressing review and permitting of Communications Facilities.

- **Staff Introduction Presentation:**
    - Castrodale introduced the topic
    - No current regulations specifically for communication facilities
    - Process that is proposed is a stand-alone process. No longer requires a SUP review.
    - Castrodale noted the key points of the draft regulations.
        - Allows for necessary infrastructure
        - Encourages co-location, discourages proliferation of towers
        - Minimizes tower visibility and visual impacts
        - Lays out a clear process for the applicants
        - Adheres to federal guidelines
        - Allows for communication facilities in all zoning districts of Ouray County
        - Towers are limited to a maximum height of 180', but must provide justification to build above 50'
        - All new towers and all replacement towers will now require stealth design, unless otherwise approved by the county.
        - Buildings and equipment cabinets must blend
        - Ham Radio towers restricted to 35' unless the applicant obtains an approved variance.
    - Castrodale followed with his conclusion
        - Staff much more comfortable in processing applications with these regulations
        - Big improvement over current using SUP regulations for communication facilities
        - Promotes co-location and stealth towers
        - Clear and understandable regulations for the Staff and Applicants.
        - Staff is recommending that the Planning Commission forward the proposed regulations to the Board of County Commissioners with a recommendation of approval.

- **Public Comment (open at 7:12):**
    - Parker noted that communication facilities are highly regulated
    - No public comments made
    - Closed at 7:13
- **Planning Commission Deliberation:**

- Williams; how tall is the log hill tower.
  - Staff noted that they could not locate the drawings but that the application states 80'.
- Parker noted that there is language in the proposed code that says additional justification is required for any proposal over 50'
- Williams; not suggesting that we lower the height, but commenting that 180' is really high.
- Williams; Is there a difference between the terms "material adverse effect" and "undue impacts"?
- Whitmore, could be reworded but noted that it would cover many different criteria, including financial interests.
- Williams; noted a typo on 23.5(C)(2)
- Peters; is one mile notification sufficient for a tower on a large ranch
- Whitmore; standard to post with notice prior to approval
- Williams; noted that there could be a very large number of notices required within a mile.
- Castrodale; noted that we have done large notices in the past, and 1 mile shouldn't be a problem.
- Parker; language in K1 is undue impacts; language in 7 is material adverse. Seems like material adverse is more stringent. Both are subjective, but Williams could propose a change.
- Williams noted that she is not willing to make any changes to the section.
- Jackman; asked how the PC landed on the 180' maximum.
- Whitmore noted that the federal regulations limit to 199' without flashing lights and painting, etc. The PC backed down from there.
- Jackman, noted that towers over 50' needed additional justification from the applicant, but does it imply that 180' is okay?
- Whitmore – spells out a maximum, but there are more stringent application standards.
- Parker noted that Staff can require evidence that a 100' tower is required, and that an 80' tower isn't going to be sufficient.

- **Planning Commission Recommendation:**
  - Williams noted that the draft isn't dated
  - Castrodale added a date to the draft
  - **MOTION:** Williams moved to forward the draft section 23 dated 05-17-2016 to the BOCC with a recommendation for approval
  - **SECOND:** Peters seconded motion
  - **DISCUSSION:** None

- **VOTE:** A vote was taken and the motion passed unanimously

Whitmore clarified that the notices may have been a bit misleading; these revisions are being considered as a package, and that the next hearing was also pertaining to communication facilities, and that starting it earlier than 8:00 would not be an issue.

3. **Public Hearing** (7:30): The purpose of the hearing is to review and make a recommendation to the Board of County Commissioners on proposed revisions to Section 2 of the Ouray County Land Use Code. Revisions being proposed in conjunction with possible adoption of a new code section addressing Communications Facilities.

- **Staff Introduction Presentation:**
    - Castrodale noted the changes to Sections 2
- **Public Comment (open at 7:33):**
    - No public comments
    - Closed at 7:33
- **Planning Commission Deliberation:**
    - Jackman asked if Whitmore was acceptable to the definitions.
    - Whitmore; yes
    - Jackman asked if "fixed structure" was common term and what it meant
    - Castrodale; yes it is common, and it is opposed to mobile structures
    - Jackman; what does ground network mean?
    - Castrodale; cable, fiber optic, conduit, etc.
- **Planning Commission Recommendation:**
    - **MOTION:** Baskfield moved to accept the changes to section 2; which includes the definition for "communication facilities" and the changes to the definition of "Public Utility", and recommend approval to the BOCC.
    - **SECOND:** Miller seconded motion
    - **DISCUSSION:**
        - Jackman asked if the definition of Public Utility should be reworded.
        - Planning Commission decided not to revise the definition.
    - **VOTE:** A vote was taken and the motion passed unanimously

4. **Public Hearing** (7:37): The purpose of the hearing is to review and make a recommendation to the Board of County Commissioners on proposed revisions to Section 3 of the Ouray County Land Use Code. Revisions being

proposed in conjunction with possible adoption of a new code section addressing Communications Facilities.

- **Staff Introduction Presentation:**
    - Castrodale noted the changes to Sections 3
        - Clarifying height limits
        - Adding the use of "Communication Facility"
- **Public Comment (open at 7:44):**
    - No Public Comment
    - Closed at 7:44
- **Planning Commission Deliberation:**
    - Orgren; asked if the use should note "pursuant to Section 23 of this Code".
        - The Planning Commission discussed the proposed change and noted that additional code references are nice for readability, but also add potential for missing a code reference if changes are made down the road (ie; code section renumbering).
    - Parker asked about the spelling of a word, but it was determined to be accurately spelled.
- **Planning Commission Recommendation:**
    - **MOTION:** Peters moved to approve the changes to Section 3 and recommend approval to the BOCC.
    - **SECOND:** Williams seconded motion
    - **DISCUSSION:** No discussion was had
    - **VOTE:** A vote was taken and the motion passed unanimously

**5. Request for Approval of Minutes; 5/3/2016**

- **MOTION:** Miller moved to approve the minutes of 5/3/2016
- **SECOND:** Williams seconded motion
- **DISCUSSION:** No discussion was had
- **VOTE:** A vote was taken and the motion passed unanimously

**6. New Business**

- Parker noted that the PC requested a press release and he had distributed a draft to the Planning Commission.
- Peters; 3rd paragraph, do we want to add a website to access?
    - Staff can provide a general link.
    - Staff can email packets if they can't find it on-line.

    - Keep time-frame flexible
- Jackman – proposed a revision to the last paragraph. New language was developed.
- Baskfield – should we add the questions from the BOCC.
    - Parker noted that the packets will have the questions listed.
    - The press noted that they could possibly list the questions in an article.
- The Planning Commission finished by massaging the language pertaining to public comment in the work sessions.
- Parker reviewed the upcoming meeting schedule.

**7. Adjourn Regular Meeting**

- **MOTION:** Williams moved to adjourn
- **SECOND:** Orgren seconded motion
- **DISCUSSION:** None
- **VOTE:** A vote was taken and the motion passed unanimously

**Submitted By:**

_____

**Bryan Sampson**
**Associate Planner**

**Approved By:**

_____

**Randy Parker**
**Chair**

# MINUTES

# RIDGWAY AREA JOINT PLANNING BOARD

# REGULAR MEETING & WORKSHOP

May 25, 2016 3:00 – 4:30 p.m. (appx)

Meeting held at the Land Use/Road & Bridge Offices, Conference Room

111 Mall Road, Ridgway, Colorado

**Attending:**

| | |
|---|---|
| **RJAB:** | Jackman, Williams, Miller, Orgren, Fitzhugh, Weaver |
| **Staff:** | Castrodale, Sampson, Whitmore |
| **Absent:** | Peters, Parker, Baskfield, Carr |

I. Call to Order – Regular Meeting of the Ridgway Area Joint Planning Board (3:02 P.M.)

Craig Jackman – acting Chairperson

Public Hearing: The purpose of the hearing is to review and make a recommendation to the Board of County Commissioners regarding a Special Use Permit application, made by Dalwhinnie Farms, LLC, to operate a Home Business at 6154 County Road 23. The purpose of the business is to operate a marijuana manufacturing/production (extraction) facility.

**Staff Introduction Presentation: (Bryan Sampson)**

- Background on ordinance that allows marijuana facilities in the County.
- Gave location, size, and zoning of property.
- Discussed Process:
    - 2 licenses/permits required – SUP, MJ Production
- Reviewed vicinity map.
- Facility will be completely within the existing arena.
- Appx. 2200 sf portion of building to be used.
- Reviewed proposed layout and floor plan.
- Discussed specific criteria for Special Use Permit:
    - Odor
        - Facility will have carbon scrubbers.
        - Staff addressing via condition – facility cannot be a nuisance
    - Impacts on Infrastructure
        - Only 2 employees
        - But there is an existing commercial equestrian special use permit
        - Staff recommending condition that Applicant must work with the R&B Department to implement mitigation plan.
- Staff then addressed the specific recommendation and conditions:

  It is the determination of Staff that this application, by Dalwhinnie Farms, LLC, for a Home Business, to operate a Retail Marijuana Products Manufacturing Facility, has met the requirements and standards set forth in Section 5 of the Ouray County Land Use Code. Therefore, Staff is recommending that the Ridgway Area Joint Planning Board

recommend approval to the Board of County Commissioners, with the following conditions:

(1) If road conditions degrade as a result of this land use, or the cumulative effects of all land uses on the property, the Applicant shall consult with the Ouray County Road and Bridge Superintendent and County Administrator to develop a mitigation plan. Such mitigation plan may include payment of impact fees by the Applicant.

(2) The property shall, at all times, be properly maintained.

(3) Applicant shall at all times maintain full compliance with all regulations and requirements including the State of Colorado Retail Marijuana Code, C.R.S. 12-43.1-101, et seq., Ouray County Ordinance 1992-01, 1995-01, 2014-003 and/or 2015-004 as maybe amended or superseded, and the Ouray County Land Use Code (including but not limited to Sign Regulations, Outdoor Lighting Regulations, and Visual Impact Regulations).

(4) Applicant shall copy the Ouray County Land Use Department on any correspondence with the State of Colorado – Marijuana Enforcement Division.

(5) Applicant shall provide the Land Use Department with a copy of the State license(s), or other approval issued by the State, within 7-days of issuance.

(6) Only those members listed on Exhibit A to the Dalwhinnie Farms, LLC Operating Agreement as of February 26, 2016 may have an ownership interest in Dalwhinnie Farms, LLC without further approval by the Ouray County Local Licensing Authority. Changes in membership, including the addition of anyone holding a financial interest as a lender, Permitted Economic Interest, or other potential ownership interest, must be approved as a transfer of ownership.

(7) The property shall, at all times, be properly maintained.

(8) At no time shall the facility (cultivation and/or extraction) operate in a manner that causes a nuisance.

(9) If a complaint (investigated and validated by Staff) is received regarding objectionable odors from the facility, the Applicant agrees to institute any mitigation methods that are required to eliminate objectionable odors emanating beyond the boundaries of the property.

(10) If road conditions degrade as a result of this land use, or the cumulative effects of all land uses on the property, the Applicant shall consult with the Ouray County Road and Bridge Superintendent and County Administrator to develop a mitigation plan. Such mitigation plan may include payment of impact fees by the Applicant.

***(Note: this condition is a duplicate to #1)***

(11) The Applicant agrees to comply with all requirements as set forth by the Road and Bridge Department for access, driveway specifications, and any road impact mitigation measures that may be required as a result of the facility.

(12) There shall be no signage other than an EMS style address.

(13) Dalwhinnie Farms, LLC shall apply to the Land Use department for any necessary building permits to construct the marijuana facilities described in the application.

(14) The Applicant shall maintain compliance to the security measures required by the State of Colorado and Ouray County Ordinance 2015-004, as may be amended or superseded.

(15) All interior lighting associated with the facility shall be completely screened and outdoor lighting must comply with the Outdoor Lighting Regulations of Ouray County.

(16) The Applicant shall receive approval for a Marijuana Products Manufacturing License, from the County and State of Colorado, prior to commencing this proposed use.

**Applicant Presentation/Comments:**

- Travis Howard/Reed Porter
- Travis is a licensed attorney. In MJ business since 2010.
- Gave some personal and professional background.
- Have operated multiple MJ licenses in Colorado.
- Have consulted and designed on MJ facilities all over the United States and Hawaii.
- Work with TOSS Security.
- Facility has:
    - CO2 extraction and warm/cold press to extract oils.
    - No flammable gasses.
    - Refinement room. Separation of various MJ elements/CBD's.
    - Storage – walk in freezer with charcoal filters.
    - Restrooms, locker rooms, break room, office, security.
    - Dried goods – no scent or capsulized.
    - Product Vault
- Owners are aware of the status of the property.
- Will not change the physical characteristics of the building.
- Know this is a landmark building.

**Questions from JAB for Staff or Applicant:**

- Rod: Who runs the business?
- Applicant: Travis and Reed.
- Rod: Do the owners live on the property?
- Applicant: Not at this time. There is a caretaker on site 24x7.
- Rod: How does operation fall within the requirements of Section 20.3A(1)
- Staff: Home Business is a broad scope definition. Any one that wants to operate one of these businesses must come in as a "Home Business".
- Craig: Is there an apartment in the building?
- Applicant: Yes, but not currently leased.
- Applicant: Can address the ownership if necessary. Right now just leasing arena.
- Rod: Code language seems to contradict what's being proposed. Doesn't fit.
- Weaver: You are extracting oils just for medicinal purposes, not recreational.
- Applicant: Not specifically limited to medicinal. Not traditionally recreational use.
- Applicant: Not all products are turned into oil. There will be physical cannabis flowers produced and sold.
- Sheelagh: What about the requirements from Section 20 – Home Businesses? (20.3A1)
- Sheelagh: Is the owner also an operator?
- Applicant: Owner would have to have a "key badge".
- Sheelagh: Sewage disposal via OWTS – is this in place?
- Applicant: Working on this now with an engineer. Will be a new/modified system.

- Sheelagh: Would we want to make completion of the OWTS a condition?
- Staff: Yes. Sure System would have to be engineered.
- Applicant: Basic sewage disposal is in place. Need a revised system for the MJ business.
- Sheelagh: What about current SUP for commercial equestrian? Applicant says is not being used. Don't SUP permits expire?
- Staff: Not the old ones. The new SUP will have a renewal period.
- April: Is this not really a small home business? Is this what the Code intended?
    - Will discuss later.
- Craig: What exactly is being leased?
- Applicant: Building, use, access, storage, work.
- Craig: Are you using main access?
- Applicant: That's the current plan.
- Craig: How are you planning on managing contaminates?
- Applicant: Those are mold, mildew, pollen, spores, etc… Building is environmentally controlled. Using only 100% organically certified and approved pesticides?
- Craig: Where and how will you test the products for contaminates?
- Applicant: Will have a lab in Grand Junction or Denver do the testing.
- Craig: 2 employees will be doing only extraction?
- Applicant: Yes
- Craig: Are employees chemists?
- Applicant: Looking at only qualified applicants for these positions.
- Rod: State has already licensed this business?
- Applicant: No. The State has not issued the licenses for this facility yet.

**Public Comment: Open: 3:52 and Close: 4:07**

- **Don Dahlstein –**
    - Live across the street for 25 years. Concerned about visual impact and odors. Feel like the issues have been addressed by this process. Appreciate what is being proposed and the process.
- **Carol Dahlstein –**
    - What about other access…this was used for deliveries etc… during that operation.
    - If the main access is used, this is right by their doc.
    - Could the traffic out the main access be managed.
    - Maybe use other road for some of the access.
    - Odor is a concern. Seems like this will be managed.
- **Dennis Kneier**
    - How long is the lease for the facility. (5 years)
    - What about employees for the cultivation and other added traffic.
    - What % of plants going into the extraction process vs the market.
    - How many trucks bringing in supplies?
    - What about the use of the north road?

**JAB Deliberation:**

- Patsy: Have done a good job of answering the questions. Lease covers the bases. Seems like a minor component (extraction) of the overall facility.
- Sheelagh: Agree. Complete application. What about the 20.3A1 – Are these folks the permitted owner?
- County Attorney: Not a typical home business. If the property owner has a "red badge" feels this would satisfy the requirement of the Land Use Code.

- Rod: We should look at the purpose of the Code language. Is the primary use residential?
- County Attorney: There is a grandfathered use here, commercial equestrian, that might not fit either. Is reasonable to consider this a "home business"?
- County Attorney: We have 1 business up and running as a home business that is production facility.
- Rod: We have an obligation to the community. Looks like a well planned and thought out business. But, this does not seem like a home business.
- Craig: Home Business is a bit out of sync with these MJ businesses.
- County Attorney: Could specifically comment to the Board on how difficult this is to use the Home Business definition which does not seem to fit this type of business.
- Weaver: Howard and Reed will not live here but will be operators?
- Applicant: Future plan is to have property owner be primary owner of business.
- April: Would property owners be part of the LLC?
- Applicant: Yes
- Sheelagh: Applicant should make use of the north entry.
- Applicant: Not a problem.
- Sampson: Could condition the approval to meeting 20.3A(1) of the Code.
- Patsy: Would like to have the BOCC look at the Home Business issue.

**JAB Recommendation:**

**MOTION:**

Williams moved that the RAJPB recommend that the BOCC consider review of Section 20.3A1 or ordinance 2015-004 to clarify the requirements of Section 20.3A1 and recommend approval of the application by Dalwhinnie Farms, LLC for a home business to operate a retail marijuana products manufacturing facility with the following conditions:

(1) If road conditions degrade as a result of this land use, or the cumulative effects of all land uses on the property, the Applicant shall consult with the Ouray County Road and Bridge Superintendent and County Administrator to develop a mitigation plan. Such mitigation plan may include payment of impact fees by the Applicant.

(2) The property shall, at all times, be properly maintained.

(3) Applicant shall at all times maintain full compliance with all regulations and requirements including the State of Colorado Retail Marijuana Code, C.R.S. 12-43.1-101, et seq., Ouray County Ordinance 1992-01, 1995-01, 2014-003 and/or 2015-004 as maybe amended or superseded, and the Ouray County Land Use Code (including but not limited to Sign Regulations, Outdoor Lighting Regulations, and Visual Impact Regulations).

(4) Applicant shall copy the Ouray County Land Use Department on any correspondence with the State of Colorado – Marijuana Enforcement Division.

(5) Applicant shall provide the Land Use Department with a copy of the State license(s), or other approval issued by the State, within 7-days of issuance.

(6) Only those members listed on Exhibit A to the Dalwhinnie Farms, LLC Operating Agreement as of February 26, 2016 may have an ownership interest in Dalwhinnie Farms, LLC without further approval by the Ouray County Local Licensing Authority. Changes in membership, including the addition of anyone holding a financial interest as a lender, Permitted Economic Interest, or other potential ownership interest, must be approved as a transfer of ownership.

(7) The property shall, at all times, be properly maintained.

(8) At no time shall the facility (cultivation and/or extraction) operate in a manner that causes a nuisance.

(9) If a complaint (investigated and validated by Staff) is received regarding objectionable odors from the facility, the Applicant agrees to institute any mitigation methods that are required to eliminate objectionable odors emanating beyond the boundaries of the property.

(10) If road conditions degrade as a result of this land use, or the cumulative affects of all land uses on the property, the Applicant shall consult with the Ouray County Road and Bridge Superintendent and County Administrator to develop a mitigation plan. Such mitigation plan may include payment of impact fees by the Applicant.

***(Note: this condition is a duplicate to #1)***

(11) The Applicant agrees to comply with all requirements as set forth by the Road and Bridge Department for access, driveway specifications, and any road impact mitigation measures that may be required as a result of the facility.

(12) There shall be no signage other than an EMS style address.

(13) Dalwhinnie Farms, LLC shall apply to the Land Use department for any necessary building permits to construct the marijuana facilities described in the application.

(14) The Applicant shall maintain compliance to the security measures required by the State of Colorado and Ouray County Ordinance 2015-004, as may be amended or superseded.

(15) All interior lighting associated with the facility shall be completely screened and outdoor lighting must comply with the Outdoor Lighting Regulations of Ouray County.

(16) The Applicant shall receive approval for a Marijuana Products Manufacturing License, from the County and State of Colorado, prior to commencing this proposed use.

(17) The applicant shall comply with Section 20.3A1

**SECOND:** Rod

**DISCUSSION:**

Had further discussion about 20.3A1 and what this means.

Friendly amendment:

Jackman: Would like to make the use of the north entrance a requirement.

* The friendly amendment was not approved. Original motion stands.

**VOTE:**

April: Yes

Patsy: Yes
Sheelagh: Yes
Craig: Yes
Rod: Yes
Weaver: Yes

Request for authorization to allow the Ouray County Planning Commission to approve the minutes for this hearing.

- Yes the JAB approves this if the minutes are mailed out. No additional JAB meeting.

**Adjourn:**

MOTION: Rod

SECOND: Sheelagh

DISCUSSION: None

VOTE: Unanimous.

**[ 4:52 p.m.]**