

MINUTES
OURAY COUNTY PLANNING COMMISSION
REGULAR MEETING

July 19, 2016 7:00 – 10:00 p.m. (appx)

Meeting held at the 4-H Event Center, Ridgway CO

Attending:

PC: Jackman, Parker, Williams, Orgren, Carr, Miller, Peters
Staff: Castrodale, Sampson, Mayfield, Bockes
Absent: Baskfield

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 – Regular Meeting of the Ridgway Area Joint Planning Board (7:00 P.M.)

1. Public Hearing (7:02 PM): The purpose of the hearing is to review and make a recommendation to the Board of County Commissioners on possible revisions to the Ouray County Land Use Code regarding high alpine residential development on patented mining claims and mill sites in the high country. In conjunction with those recommendations, the Planning Commission will also review possible related changes to Sections 2, 3, and 13 of the Land Use Code.

- Parker called the meeting to order and introduced the topic. He then read the following written public comments into the record:
 - July 18, email from Dale Stanislowski
 - July 18, email from Heather Yeowell
 - July 18, email from Andrew Yeowell
 - July 19, email from Dave Valentich
 - July 19, email from Mark Iuppenlatz
 - July 19, email from Matt Wade (Peak Mountain Guides)
 - July 19, email from Josh Kling (Kling Mountain Guides, LLC)
 - July 19, email from Don Rodgers
- Parker reviewed the public hearing process
- Staff Presentation
 - Castrodale gave a brief presentation:
 - Reviewed the process
 - i. Set schedule
 - ii. Staff responded to questions from BOCC
 - iii. Planning Commission held two work sessions to respond to the questions, and then two workshops to review the draft.

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- iv. Staff was developing the draft prior to the planning commission workshops. 1st draft had open ended questions for the Planning Commission to fill in the blanks.
- v. Planning Commission report has additional information.
- Parker noted that Sheelagh Williams had acted as scribe during the process and developed the extensive planning commission report.
- **Public Comment**
 - Open at 7:14 PM
 - Roze Evans; thanked planning commission. Smart and restrictive regulations essential to protect Alpine zone. Alpine is special place and is the heart and soul of the county. Visitors from all around the world spend time in our alpine area, and it's a fragile environment. Thinks there should not be any residential development in the ecosystem. From tundra to 9480, development should be very limited. Should be a minimum 35 acre parcel to build. Mining claim owners bought as a speculative real estate investment. County has a right to enact regulations, perhaps stricter than proposed.
 - Jen Parker; thanked planning commission. BOCC asked you to keep it simple. Simple to me would be no development above 9500'. Good regulations, but disagrees with 5 acre minimum. Should be 10 acre minimum. 1000 sf limitation is acceptable, but 2500 is not.
 - Mark Luppenlatz; owns 15 claims, all above 11k feet. Skied in the area for a decade and knows the area well. Beautiful area, but is not wilderness; covered with roads, logging trails, ATV's, jeeps. A lot of activity. Not a pristine untouched area. Many living above 11k in the past. 49% of county is public land that is already protected. Spent 8 years, looking for a place to build a mountain chalet. After research, I bought claims on Red Mountain. Many claims around me were going to be sold. Bought additional claims to prevent others from building on every claim around me. Regulations promote building on every claim, instead of my plan to combine multiple claims. Will force people to build on every claim. If I lose the right to build on all of my claims, I've lost my life savings and investment.
 - Rein Van West; Thanked planning commission. Agree and support regulations proposed with the exception of two. First, the intent section. Not assured that limited development is supported when there is a 5 acre minimum. Will lead to higher density and sprawl. Asked planning commission to reconsider. 10 acres would be better. The second; if the intent and purpose is as stated, than a 2500 sf footprint is too large. Ask that the Planning Commission to reduce maximum size allowed. Makes sense to limit

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exterior foot print to 1000' sf, any bonus density should be on a second level, up to 2,000 sf total. Any single floor structures could be limited to 20'. How are yurts treated? Planning Commission should review the status of these structures.

- Jan Van West; Agreed with Jenn Parker and Jan's husband. Wants to plant a seed; we need an environmental impact study. There may be an endangered butter-fly up there. Has talked to researchers, but they haven't been up there. Also thinking about lynx.
- Olaf Rasmussen; Does not think there should be development above 9500'. New development in high country is visually disturbing. Wildlife may disappear with increased development pressures.
- Kelly Ryan; representing San Juan Hut Systems. Interested in maintaining character of the high country. Thinks that mining claims are purchased as mining claims, and if not being mined, other development should maintain the 35 acre density. Tree line elevation may make more sense than a specific elevation measured in feet.
- Andy Mueller; on behalf of the Uncompahgre Mining Company. Orvis Family is the owner, and they are against the regulations. Fee simple property, just as all other private property. Patented by the federal government under mining act and the act did not limit the use to mining. Many mining related commercial business existed above 9500' in this area before. The county has only seen 4 or 5 building permits in the last 4 years. This is not a crisis; it's slow evolutionary growth and isn't going to change the face of the county. Building is not feasible on many of these properties to begin with, without enacting these regulations. There are not houses that you can see, for the most part, because people don't choose to build up there.
- Arlen Huggins; Supports development of the regulations set forth by the Planning Commission. The acreage and building size restrictions don't necessarily address visual impact. Proximity to road and vegetation play into visual impact. Many 5 acre sites above tree line; will look like a poorly designed subdivision. The expansion of adjoining contiguous site is a bad idea. Doesn't think it's going to happen; will end up with 5 acre subdivision affect. Supports building limitation, but no exceptions. Building in tundra zone should not be allowed.
- Austin Ray; should not be development above 9500'. Tundra definition is vague. Proposed limiting structure height to surrounding vegetation. When properties don't adjoin a public road, the driveway improvements may be more detrimental.
- Peter Rowland; want to talk about change. If we're going to look into the past, let's look at the Bruno treaty. Don't

ignore changes of the past. Speaking for the plants and the wildlife in the tundra zone. Development in tundra zone is not appropriate. I do understand ecology. Own 3 mining claims. I don't feel like I lost my property rights. If claims are to be building lots, they should be taxed as vacant land.

- Ken Lipton; congratulated the Planning Commission and Staff for their work. 24.2 of the draft could result with a mining operation that has a 7,000 sf home on the property. Section 24.3D3b & Section 24.3H1, seems to be a contradiction. Section 24J; there should be a period after 11,000 feet. Section 13.8, failure to enforce. Does not agree with that; if county doesn't enforce, they should be held liable.
- Scott Williams; thanked the planning commission and staff. The essence of planning is balancing private property rights with the public interests. Tough to get it done in the time frame allotted. Doesn't agree with everything in the draft, but thinks that the draft and report does a good job outlining the issues. Provides alternatives and recommendations to the BOCC. Time to turn it over to the BOCC with your recommendations and report.
- Mike Nadiak; Represents Yankee Boy Conservation. Agrees with 10 acre minimum. Would like to see regulations that are on par with adjacent counties. If not, development pressure will come to Ouray County. Considers our scenic values as a renewable resource. Many come from around the world to see our scenic alpine area. If we protect it now, it will pay off for future generations.
- Chuck Wrye; Very impressive work. Have spent much time in the back country. The forest service is becoming stricter and stricter on the hard rock running event. Only one vehicle per runner. Should be no building above 9000'. Agrees with Rein Van West. Not pleased with ATV use on Red Mountain. Disturbed with the 10 acre minimum. Enforcement is the key. Concerned that wealthy people will be the only ones that can build trophy homes in the high country unless regulations are passed.
- Nathan Disser; representing self and San Juan Mountain. Guides. Have permits to access the back country to take guests skiing. Almost always required to cross private land. Generally have good relationships with property owners that let us through their property. If you look at the claim map, you can't access public land without crossing private. If property owners feel that a taking has taken place, they may no longer allow access across their property. That scenario has just happened in San Juan County as a result of this type of action. Could occur in Ouray County. Would be a negative and poor outcome for all of us. Not against thoughtful regulations, but these could produce a takings issue.

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- Barry Doyle; in support of strict regulations. Some may have the “not in my backyard” mentality. Our views and vistas are an economic boom for our county. We welcome visitors from around the world. It’s more than money; it’s about beauty. Hopi term for life out of balance; a term when development is running wild. People from all sides respect the alpine beauty. Theodore Roosevelt most proud of his conservation efforts. Should continue that vision and protect it for the future.
- Anthony Gegauff; Here to consider regulations of mining claims for the unintended purposes of residential and commercial development. Regulation does have a place. Consider operating a motor vehicle; there are two essential regulators; the accelerator and the brake. The accelerator is frequently over used sometimes resulting in catastrophe. More experienced drivers are more familiar with the benefits of the brake pedal. Preserving beauty of high country is of monumental importance to those on both sides of this discussion. Property rights become secondary when the value of that property is severely degraded. Common sense regulations will benefit everyone. (Mr. Gegauff also submitted written comments at the hearing).
- Eve Becker Doyle; supports regulations for reasons already said.
- Daniel Zekidas; commercial guide. Takes many guests skiing in the Red Mountain area, and they’re not here to ski through a development. Do believe that there is good ways to access the properties without crossing private. Supports 35 acre limitation, and 1,000 – 1,500 sf size max. Proposed a minimum distance between houses. Supports limiting roads. Something should be in the code that states that no winter road maintenance is allowed.
- Al Lowande; thanked planning commission for their work. Have to agree with most that have already spoken. People come here for the beauty of the high country, and to put at risk is stupid. Government function to protect public’s interest, and in this case it conflicts with private property interests. The 5 acre minimum is too small. Log Hill village has an average 5 acre parcel size. Can visualize high country looking like Loghill village. 10 acres or more would be appropriate. Disagreed with Mr. Mueller about it not being a problem. The incredibly wealthy are looking for status symbols, and they will build there. Yurts should be forest green if they are allowed.
- Heidi Nadiak; agreed with Jan Van West, and the comments about habitat fragmentation. Many people go up there to enjoy the high country. Incredible experience to see the wildlife in the area. Agrees with no building above tree line. Had recently been hiking, and there’s much more ATV’s and jeeps, and even hikers. Should keep impacts to a minimum. Driveways can’t be tucked

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away, home owners will expect road improvements, and
would be detrimental to the economic.

- Tom McKenney; Agreed with comments by many previous speakers. Has been to all meetings except the last workshop. Have we lost our minds? How can we protect anything with a density of 1DU/5AC? This is a treasure. Doesn't agree with the comments about it not being a big deal. 18 questions were all answered without development of a purpose or intent. 5 acre density does not support the purpose/intent now shown in the draft. 1st question should have been whether residential development appropriate for the area? My answer is no.
- Andrew Klotz; It would be madness to have heart surgery after eating a cheese burger. That would be fear and speculation driving me into making decisions that could have grave consequences. This is similar to what I see unfolding here. I think we have a lot of well-intentioned people, but I think the policy reaction is misguided. How many have been permitted in the last 10 years? 7 or 8? We may be over reacting. Has been a planner for 15 years. Has often been working to cleaning up the mess of unintended consequences that these types of regulations create. It never turns out quite like you intend. Appealing to you to be very careful with your decision here. Are you fully apprised of the consequences that could result?
- Ken Orvis; against these regulations. Most mining claims already have regulations on them. Instead of regulating above 9,000 feet, how about regulating above 4,000 feet. No one here would like it if they couldn't live here and enjoy it. If you want a limit let's limit it to keeping the entire western Colorado beautiful. Can't hike through the mountains without trespassing; and I don't think anyone here would like it if I trespassed through their back yard or living room. That's basically what you're doing when you go into the high country.
- Fred Boyle; Be specific. Generally, when a big mistake is made, it falls generally on all of us. Go talk to the National Park Service; go talk to them. Nothing here deserves less stringent protection than our national parks. Hopes to hear that you've engaged an interspecies mediator. Speaks for residents that can't speak for them selves (plant's, animals, etc.). Sees young people on ATV's assaulting the wild places. There's more ATV's and always less wild places. It would be regrettable for adopt anything than the most stringent regulations.
- Jeff Bockes; would like to provide a counter argument to the position stated earlier, which seemed to be a reframe of the sentiments expressed during the Section 30 hearing. That argument is that the current and longtime property owners have been good stewards of the land, a fact that I generally agree with, and that the pace of building has generally been slow and therefore, no new regulation is

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needed. Reality is that there are only so many buildable parcels in this area, but there are many dozens or possibly hundreds of buildable parcels. Over time, many of these can and likely will be developed. Entire towns, such as Red Mountain Town and Ironton, were developed in a single season. Current regulations would allow development to mountain village proportions. If we saw that everyone would be up in arms, except for the one that built the house. Building well blended structures is entirely possible. Can build and maintain the quality of the area. Several cabins in the Red Mountain area that many don't even know are there. Recommends adopting these regulations. Also recommended, as the GIS coordinator, to lessen the requirements for topographic survey information.

- Howard Greene; fully supports this effort. Current lack of control clearly needs to change. How far does the county's authority extend? Is there a takings issue at all? We should do whatever the law allows to protect the area. Mining claims were developed for the sake of mining. Buying a mining claim to build a house, when there is no mining does not reflect the original intent. Residential and mining uses will conflict. Agrees with Al Lowande about definition of use by right. Max structure should be 1,500 SF, and 1000 SF without incentives. Minimum lot size should be 35 acres. Limit commercial uses to winter summer outdoor sports. Should have a clear red line to prevent any structures in the tundra, accompanied with a GPS delineation of tundra areas. Doesn't agree with statement about allowing larger homes will encourage people to protect more land. You've done excellent work on trail issues, access, etc. Send forward to BOCC.
- Averil Doering; Sounds like there are about 20 people in support and 4 opposed based on the comments tonight. Personally agree that we should be looking at 35 acre density and 1,000 sf maximum. Thinks that visual impact regulations that promote blending should be used. That is a compromise; would like to see no development in this area. Would like to see a hut system that is owned by the community, and would be a huge benefit. Can develop this in a smart way, and allow the community to benefit.
- Andy Help; liked a lot of what Al Lowande said. Doesn't want to see development above 9500'. Many people will be coming here, and it will change things. It's worth doing these zoning regulations right.
- John Hollrah; would like to see a show a hands of how many would like to see regulations (a show of hands was given).
- Mike Kemmet; Referred to the planner that spoke; we have to ask if we want to become that type of community. If we don't have regulations, it could quickly become a Telluride or Mountain Village. Someone is going to get hurt, on one

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side or the other. Quoted Spock "The needs of the many
override the needs or desires of a few".

- Jim Stephenson; 30 speakers tonight. I agree with 27 of them. Noted that the access issue brought up by Nathan. It's a serious issue that needs to be considered.
- Jessie Orvis; asked for a show of hands of people that own the property that these regulations affect. A show of hands was given. Quite a few less than the earlier show of hands. My suggestion is that if you want to control the property that you're talking about, then buy it and pay the taxes on it.
- Andy Yeowell; owns land up there, wants the planning commission to keep in mind that EMS services will be taxed with increased development. Future residents in that area will expect emergency services.
- Thomas Simulson; on behalf of him and his wife. Impressed with comments tonight. Size of lots needs to be as large as possible, and size of structures should be as small as possible. Preservation of tundra is paramount at all costs. Driveways and access is a major issue with erosion. Agreed with Nathan about access, we all love to have the close access to the mountains, and to have that threatened is concerning to me. Loves the sensation of openness and open space. It's getting rare to find peace and serenity. Thankfully many historical structures are there to enjoy, some are remnants that we have to look at.
- Craig Fetterolf; packet states 795 buildable claims. Let's say that individual site constraints results in 50% reduction. Left with 400 buildable sites. Estimated total land area affected by regulations to be 5 square miles or less, and stated that it would be 130 homes/square mile. That doesn't sound like you're keeping it rural, scenic and private. Suggests using a 35 acre minimum with 1,000 SF max building size.
- Public comment closed at 8:40 PM
- Parker called a 5 minute recess
- **Planning Commission Deliberation & Recommendation**
 - Yurt question about how they are classified.
 - Castrodale; not residential dwellings but do require building permits. Site Development review of Yurts has not yet been determined.
 - Williams; asked if people could live in them
 - Castrodale; they can camp in them with a long-term camping permit.
 - Conflict between Section 24.3D3b & Section 24.3H1.

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- Parker clarified the conflict & responded as to why the apparent conflict exists.
- Lipton noted that he was referring to roads, not trails.
- Parker; some roads are disputed. Some may claim private roads. Just because they're on the map doesn't mean there isn't conflicts. Trying to eliminate potential legal conflicts.
- Lipton; Isn't clear.
- Question from public; How does the draft language about trails relate to skiing?
 - Parker noted that he was not aware of any rights-of-way over the snow. Question is whether the county be looking at developing a method to create a right-of-way to allow people to ski.
- Williams; question about winter maintenance. There is a note at the end of the section about winter maintenance.
- Williams; next question was about how far the county can go with the regulations.
 - Parker; legal opinion provided at the beginning of process. Issue of taking is not before the planning commission, but a policy decision that will be dealt with by the BOCC.
- Williams; next question was about emergency services.
 - Parker noted that 24.5 states that anyone that builds up there is aware that there are limited EMS services. Doesn't mean that EMS can't go, but rather that the home owner can't rely on EMS to respond. Building at their own risk.
- Parker asked each planning commission member what issues that they may have with the draft.
 - Carr; still concerned about the allowed size of structures. Below 2,000 sf would be better and 1,500 sf would be preferred.
 - Parker asked if the cap should be reduced to 2,000 square feet?
 - Miller; thinks 2,000 sf is too much. Listed of several room sizes and said you can build all of the rooms within 1,000 square feet. Proposing no bonus square foot allowance, and limit up to 1,400 sf.
 - Jackman; nothing to add to that issue.
 - Williams; issue of density. If we allow a bonus for giving up development rights, I think it's a good trade-off.
 - Orgren; decided that the opportunities to get to 2,500 is very difficult, so is inclined to keep it as is.
 - Peters; agreed with Williams. Density is a big issue.
 - Parker; retiring development rights is important. They must be adjacent. Not in favor of changing. The 1,000 sf base line is quite generous. Many existing structures are below that limit. Noted the trail allowance might be able to be reduced.

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- Williams; testimony about why the property owner would be willing to give up development right for 500 square feet. Would be willing to raise that to 1,000 sf.
- Jackman; would be better to do away with the adjacent requirement.
- Parker; not many in favor of the 5 acre minimum from the public. Minimum to build is 5 acres, and if claim is 7 acres in size; you could not split the additional 2 acres off. Asked each planning commission member about how they felt about raising the minimum acreage required.
- Miller; researched the list of claims. 64% owned by a company and not individuals. Difficult to come up with.
- Orgren; number doesn't matter as much as where they're located.
- Miller; no way to tell from list if they're contiguous.
- Mayfield (county assessor), some folks may have a 1/3 interest in each claim.
- Peters; compressed in timing to gather information. There will be unintentional consequences. I believe that what is proposed is reasonable and we should stick with it.
- Orgren; agreed with Peters. Personally has an issue with what is more visible; several cabins on 5 acres vs one mansion on 35 acres.
- Williams; agreed.
- Jackman; this is tough. If we were talking about creating new lots, the answer is easy. No. Struggles with affecting lots that have been in existence. What lots exist that are not patented mining claims?
- Miller; would still like to see a change to either the size of the lot or the size of the house. Asked for clarification about above 11,000'.
- Parker noted that no development can occur on the tundra, regardless of elevation.
- Miller discussed the spreadsheet and recommended that the BOCC gather that info.
- Planning Commission agreed to that recommendation.
- Carr noted again that he felt the 5 acre minimum is too small.
- Parker asked if the Planning Commission would agree to a note to the BOCC that there was substantial agreement to raise the minimum lot size, but also note that many of the public comments came from folks that did not own mining claims.
- No consensus was reached regarding changing the maximum structure size.
- Parker noted that the GIS department submitted a letter about the survey requirement. Should the Planning Commission add a recommendation to consider revising the draft to lessen the

requirement for topographic surveys to pertain only to development area, and then also request a corner survey?

- Parker; asked if there were any other questions about section 24.
- Peters; concerned that we have people here making a living. Are we restricting those people by alluding to commercial? Should note to BOCC that we were tasked to deal with residential but the regulations also include commercial uses.
- Parker noted that one of the reasons this moratorium is in place is because of a proposed commercial use in the high country. Parker noted that it was his impression that the size limitations would apply to bed and breakfast operations.
- Williams noted that she could add to the report that they don't want to adversely affect the guides.
- Peters agreed to that.
- Parker; discussed over the snow easements.
- Peters; page 1 of 6, talks about maintaining existing character. Concerned about not allowing public improvements to public roads.
- Parker; tied to winter maintenance agreement.
- Peters; this may not allow any improvements to the county roads, and you need to be careful with that.
- Parker proposed adding a recommendation to the report that Staff and BOCC review Sections 24.1D1 and 24.3H1 and 24.3H2 to make sure that they're consistent and consistent with the road maintenance of the county.
- Peters; page 8 of 14 in Section 13, last paragraph of G6, could be open the county to legal issues.
- Parker; County Attorney has reviewed that language.
- Orgren; definition of Tundra might be too broad definition. Public noted that buildings could be limited to height of trees.
- Parker; Danika Gilbert provided an alternative definition for Tundra. Recommended using it and having the BOCC review the definitions.
- The planning commission discussed several ways to define tundra. Came to consensus to leave definition in draft, but also include Danika Gilbert's definition too.
- Williams; J1A, page 5 of 6, should be changed to not be allowed in the tundra. Castrodale made the change to the draft.
- Peters asked if they should clarify with J1 by adding "new" driveways...
- Planning Commission agreed and Castrodale made the change.
- Miller; concerned about auxiliary structures, shouldn't have them when 2,500 sf home is allowed.
- Jackman; what if the primary structure is only 1,000 square feet?

- Miller; two buildings are worse than one, and would like to see it removed.
 - The planning commission discussed Miller's proposal, and it was decided that no change would be made to the report or draft, but to note in the minutes that the planning commission did discuss.
 - Miller; opposed to using vegetative screening because it may die and not be productive.
 - Parker; not saying that they must use vegetative screening. It is mentioned in section 9, but not in this draft. Wanted to include in the report that Staff should look at SDP so that it covers yurts. It was decided to add a note to the report that the PC believes that yurts and temporary structures with visual impacts (like wall tents) should be covered under the SDP review.
- **MOTION:** Williams moved that the planning commission recommend that the BOCC approve the new section 24 and the changes to 2, 3 and 13 after consideration of the issues raised in the planning commission report.
 - **SECOND:** Carr seconded the motion.
 - **DISCUSSION:**
 - No further discussion was had
 - **VOTE:** A roll call vote was taken and the motion passed unanimously
 - The Planning Commission noted that minutes would be approved at 10:00AM on July 27.

2. Adjourn (9:58 PM):

- **MOTION:** Carr moved to adjourn
- **SECOND:** Miller seconded motion
- **DISCUSSION:** No further discussion was had
- **VOTE:** A vote was taken and the motion passed unanimously

Submitted By:



Bryan Sampson
Associate Planner

Approved By:



Randy Parker
Chair