EXHIBIT A3 – PLANNING COMMISSION MINUTES (2/26/13 & 3/21/13)

Minutes
Ouray County Planning Commission
February 26, 2013 7:00-10:00 p.m.
Ouray County 4-H Event Center
22739 Highway 550, Ridgway, Colorado

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

In Attendance:
Planning Commission Members: Tim Currin, Ken Lipton, Randy Parker, Karen Risch and Sheelagh Williams
Planning Commission Alternates: Dudley Case
Staff: Mark Castrodale, Bryan Sampson and Marti Whitmore

Absent: John Baskfield

I. Call to Order – Regular Meeting of the Ouray County Planning Commission:

Planning Commission Chair Lipton called the meeting to order at 7:00 p.m.

1. Public Hearing: Proposed Land Use Code Amendment – Section 9, "Visual Impact Regulations"

The purpose of the hearing is to consider possible amendments to Section 9 – "Visual Impact Regulations."

Lipton introduced the Planning Commission members who were present. He explained that the Planning Commission would be allowing people who were representing groups of people to speak and they will be allotted fifteen minutes. He discussed the process. First, he would ask Staff to speak. Castrodale would give an overview of the history of the visual impact review. Then Lipton would give a brief presentation to highlight the differences between the proposed revision and the existing Section 9 language. After that, Castrodale will discuss how the proposed revisions would be administered by the Land Use Staff. Some of the letters were mistakenly addressed to the Board of County Commissioners but would still become part of the record. The County Attorney had wanted to make it clear that this was a Planning Commission hearing and not a Board of County Commissioners hearing. Procedurally, the Planning Commission makes a recommendation to the Board of County Commissioners. That would happen either tonight, if time allowed, or at a continued meeting in March. He noted that the recommendation from the Planning Commission was not binding. The Planning Commission has no authority to enact code; they are just a recommending body. The Board of County Commissioners would not be present at this meeting, they are not supposed to be present at this meeting, but they would receive whatever recommendation the Planning Commission forwarded as well as all of the documents and presentations submitted along with emails, etc. During the presentations, the Planning Commission would not take any questions. If speakers had questions during their time of speaking, the Planning Commission would take notes and try to address them during the deliberative phase. Once the initial presentations were over, the Planning Commission would open the public hearing to allow anyone who wants to speak a chance to speak. At ten o'clock, if everyone did not get a chance to be heard who had signed up to speak, the Planning Commission will reconvene the public hearing on March 21 at 7 p.m. at the Ouray County 4-H Event Center. It is important to sign up tonight to speak. The Planning Commission will take written comments up until March 14 but if people do not sign up tonight they will not be able to speak at the continuation of the public hearing.

Staff Presentation:

Castrodale: This will be brief. A few key things happened in Ouray County that precipitated this three-year process. In January 2008, the Board of County Commissioners (BOCC) began reviewing possible Code changes to apply additional regulations to development on mining claims. The Board of County Commissioners handed that process off to the Planning Commission to conduct work sessions and a public hearing. That work, somewhere along the way, began to be referred to as Section 30 – the South Alpine Zone. In June 2009, the

Planning Commission held a public hearing. The record shows that there was concerted opposition. At that time, the Planning Commission voted to take no action on that draft. The BOCC directed the Planning Commission to suspend further work on Section 30 and in July 2009 a Town Hall Forum was held to collect information and to get feedback from the public on the Section 30 – South Alpine Zone idea. At that time the BOCC withdrew any additional work on Section 30 and subsequently stated that it would conduct work sessions to explore various issues raised by Section 30 including possible expansion of the visual impact regulations. In 2010, the BOCC adopted Resolution 2010-045 directing the Planning Commission to begin reviewing Section 9, the Visual Impact Regulations. The resolution included Exhibit A that detailed twelve key points that the BOCC was directing Planning Commission to look at. It also included a draft of possible changes to Section 9. The Planning Commission held a series of work sessions, usually two to three a month, starting in December 2010 that included time for public comments. The Planning Commission reviewed all of the issues as directed by the BOCC in the resolution and Exhibit A. There were multiple field trips around the county to review various issues, especially skylining. The Planning Commission voted to move the draft regulations to public hearing on January 15, 2013.

Lipton stated the purpose of Section 9. *"In order to preserve the scenic beauty, rural setting, character, and the dominating influence of the natural environment of Ouray County, there is hereby established a Visual Impact Regulation. The intent of this regulation is to minimize the visual impact of both individual structures and development as a whole so that development blends with the natural surroundings and does not compete with the existing physical environment for the viewer's attention, thereby preserving the unique physical environment and scenic values that have traditionally characterized and defined Ouray County."* To this revision from the existing Section 9 the Planning Commission added the word "*blending*" and removed "*protecting County's property values.*" To Section 9.2, Compliance, the Planning Commission added "*mandatory blending of exteriors of new construction, remodels, additions and reconstructions.*" They added exemptions for maintenance, transparent and short four-foot or less fences, remodels, additions and reconstruction of existing structures that violate the skyline breakage rule, and exemptions for remodels, additions and reconstruction of existing structures that violate the setback rule. An exemption was added for the Colona Zone. Setbacks within subdivisions that were approved prior to adoption of this revision were exempt. Historically accurate structures such as ranch homes or mining-type structures were exempt. And the Planning Commission exempted the 100-foot setback when visual impacts are reduced. And they removed the continued compliance requirement.

Section 9.3 – Criteria and Standards. The Planning Commission added those county roads that have similar characteristics as roads already designated as visual impact corridors. The new roads are: 5A, 8,8A/B/D/G/H/I/K/L, 9, 9A/X/Y/Z, 10A,12, 12A, 14, 14A/B, 16, 17, 18, 20A/B/C/D/E/W, 23, 24A/C/D, 26, 26A/B/C/D/E, 31, 31A, 361 and 906A/B. The Planning Commission clarified how visual impact corridors were mentioned compared to the existing Section 9. He explained that some areas and some roads that were added were already in the visual impact corridor as a result of being seen from one of the existing visual impact corridors. For example, CR 12 and CR 12A, if you are on CR 12A, which is a road to be added if this goes forward, if your property can be seen from CR 10 and it is within a mile-and-a-half of CR 10, even though CR 12A is not currently in the visual impact corridor, it would be considered in it because of its proximity to a road that is currently in the visual impact area. If you go to CR 17, the southern end where it is close to Highway 550, that is not currently in the visual impact area but Highway 550 is, so if you are within a mile-and-a-half on that road you would be, de facto, in the visual impact corridor. It is important to point out that if CR 17 is added in, then you would look at another mile-and-a-half, probably going west, that would be included in the visual impact corridor.

The Planning Commission clarified the skyline breakage allowance and added an exemption for additional skyline breakage under limited conditions. They clarified measurement of setback from the escarpment edge, and they clarified that analysis of screening and vegetation would be done under summer conditions. They revised the point system. They reduced the structure size impact point calculations by excluding non-visible portions of the structure. They reduced the height impact point calculations by using a weighted, average height instead of maximum height and described how it was calculated. They removed mitigation points for lot size, and simplified the calculation of natural screening points, and reduced the number of available points by two. They revised the point system to increase mitigation points by six for distance from the road, particularly in the first 600 feet. They reduced mitigation points for additional screening but allowed for doubling of mitigation points when there was very little limited natural screening. They added a mitigation point for legal conforming

parcels. They added mitigation points for reduction of apparent mass of the structure. They increased from five to six points the maximum points allowed per structure.

In looking at the process for review in Section 9.4 they changed the wording of "*building official*' to "*Land Use Staff*" since they were frequently involved in the permitting process.

In Section 9.5, Submittal Requirements, the Planning Commission added the following specific requirements that someone getting ready to build would need to submit for a permit: a scaled site plan showing the proposed location of the footprint of all proposed construction; elevation drawings of the proposed structures with height and square footage; and color samples for the roof, walls, garage doors and trim.

Changes were made to 9.6, Definitions. The Planning Commission added definitions to new or previously undefined terms including "*apparent or perceived building mass*," "*bench*," "*blending*," "*building mass*," "*commercial solar farm*," "*earth tone*," "*glare*," "*hill*," "*neighborhood solar farm*," "*silhouette*," "*structure*," "*visual impact*," and "*weighted average height*." They modified definitions for "*ridgeline*," "*screening" (natural and additional)* and a "*viewing window*." The definition of "*apparent massing*" is "*The general appearance of a structure as modified by design elements used to mitigate the mass and scale of a structure through such things as shading and shadowing.*" Such design elements include but are not limited to fenestration, overhangs, indentations, changes of material, changes of texture, changes of color, different roof styles, porches, patios, decks, chairs, and columns. The definition of "*blending*" is "*Blending may be accomplished by ensuring that all exterior materials, finishes and colors for structures integrate with the surrounding natural environment to produce a harmonious effect. Blending shall include the use of non-reflective building materials, low luster earth tone colors. Contrasting or complementary colors in building trim are not precluded provided that these colors do not dominate the structure. Blending should achieve minimal visual contrast to the surrounding natural landscape or vegetation as viewed from a designated corridor. Screening, size, shape, color, hue saturation, texture, tone and shade or light reflection (glare) shall all be components of blending.*" The earth tones allow for a wide range of palette colors.

Additional standards and covenants relating to visual impact, the differences are administrative. They renumbered without changes Section 9.7 and Section 9.8 and they updated references to other Land Use Code sections. There is an entirely new section on Alternate Energy Structures. The Planning Commission worked carefully with leading people in the field today, as well as checking other codes in other counties in the state and developed regulations, should they be adopted, for alternate energy structures such as solar panels and wind turbines.

Castrodale: He discussed Administration of the Proposed Code. Staff looked at the draft, and he and Sampson talked about how they would administer it on the ground. This was a generic view of this. Everything was different and this did not take into consideration every possible outcome but, hopefully, would give an idea of the difference in how things are done today versus how they would potentially work in the future. In the size of a structure, for example a two-story 2,000 sq. ft. home with a 50% exposed walkout basement, the existing Code counts the entire 2,000 feet for a total of 2 points. The proposed Code would give a 50% reduction for the non-visible portion of the basement for a total of 1.5 points. Regarding the height of the structure, the existing Code uses a maximum roof height for a total of 8.7 points in the example. The proposed Code uses a weighted average building height whereby the home is broken into segments to get a weighted average height rather than going to the maximum roof height and counting the entire home as that height.

The process to calculate natural screening was unchanged. What changed was how to assign points. The first step was to establish the viewing window, which was unchanged from how it is done today. They create the 1.5-mile radius in the corridor that creates a triangle from the home and would become the viewing window in which to assess the impact. Step 2 was to establish the visible portion within the viewing window. In Step 3, they would assign points. In the existing Code an applicant received one-tenth of a point for one percent screening. The proposed Code uses ranges to assign points. The ranges would give Staff something more concrete to work with.

> Blending. The existing Code provides 3 points for blending but the proposed Code made blending mandatory so there was no additional points for blending.

Distance from the road. The existing Code provides one-half point for every quarter mile from the visual impact corridor. The proposed Code maintains the points from the existing Code but also adds one point for every 200 feet from the road starting at 200 feet and ending at 600 feet.

PUD mitigation points. The proposed Code is similar to the existing Code but eliminates the 1986 restriction date and adds conforming lots. If a project is located in a PUD subdivision or on a conforming lot it would receive one mitigation point.

Building mass. This is a new concept; it is not in the Code today. He showed an example of several elements of massing that included a change of color, fenestration, stairs and overhang. The proposed Code assigns a half point for each element of massing for up to a maximum of three points.

Additional screening. He showed an example of three trees providing an additional 35% screening. The existing Code provides for 3.5 mitigation points; whereas, the proposed Code would provide for a half point per element of additional screening. Under the proposed Code, three trees would equal 1.5 points.

Skyline break exemption. In the proposed draft, where no building site exists that would comply with the skyline regulations, a structure may still be built if the skyline break does not exceed 15% of the silhouette; the structure is not located on a ridge, bench, escarpment or hilltop; and the skyline break is not visible for more than 500 feet along the viewing window. Today, the Code allows for a "*gap rule*", and this would add more flexibility.

Agriculture and mining structures exemption. The Code says that mining and agriculture structures are exempt if they were not located on a ridge or escarpment. The proposed Code said that they were exempt if they were not located on a ridge, escarpment, bench or hilltop.

Historically accurate blending exemption. This concept is not in the existing Code. Historically accurate buildings are exempt from the blending requirement of the draft if the structure is consistent in design, style and color to structures built prior to 1920 and located within one mile of similar historical structures.

The only statement that Staff wanted to make was that the draft, as written, could be implemented on the ground. They were not making a statement that they were for or against it.

Discussion:

Public Comment:

Lipton opened public comment at 7:35 p.m. with the group presentations of fifteen minutes each. He stated the ground rules. He asked that the audience withhold applause; it would not affect any decisions. He noted that the Planning Commission had received written comments that were part of the official record. The list included Tom McKenney, Jon and Rosemary Esty, Jennifer Parker, Linda Hanson, Scott Williams, Rozanne Evans, Robert Green, Jen Pritchett, Don Paulson, John Gunther, John Baskfield, ROCC from Rozanne Evans, the Becker-Lister family, Randy and Liz Loftis, Phil and Terri Blackford, Al Uhling, Sara Coulter, Jane Ross, Barbara Steele, Jerry Roberts, Robin Gregory, Ray Cozzens, Kay Lair, and Robin Cascade.

Donna Whiskeman: She is a broker with RE/MAX in Ridgway. Her purpose was to help everyone to understand how the proposal would affect them from a real estate standpoint. She began a PowerPoint presentation and showed a list of the current visual impact roads. There were nine of them. There are 44 new roads proposed. If they are added, 53 out of 87 numbered county roads, 61%, will be considered visual impact corridors. She talked about the consequences of adding the roads. Many received a postcard last week that was riddled with misrepresentations but she only wanted to deal with one. The postcard said, *"Will adding roads make existing homes illegal? The answer is no. Existing structures are grandfathered and never need to be changed to comply with the new regulations."* The answer should have been: *Existing structures are grandfathered and never need to be changed to comply with the new regulations as long as you or any subsequent owner never wants to remodel, add on, or have to rebuild due to a fire.* If you live on one of these roads or within a mile and a half from one of these roads and your house can be seen from the road, potentially you will be considered a

non-conforming structure. Section 4.2 of the current Land Use Code states, *"The expansion or enlargement of a non-conforming structure shall be considered a structural alteration and on completion of such expansion or alteration such structure shall conform with all provisions of the Code."* If you have a fire and more than 50% of your home burns and it must be rebuilt it does have to conform to Section 9. There are two exceptions to conforming to Section 9. The first one has to do with skyline. If you have to rebuild or remodel and are not on a bench, ridge, escarpment or a hilltop, you can have a one-time exemption from the skyline rule for the life of the structure. You will only be able to add 20% of the square footage. She showed a home that currently complied with Section 9 from Highway 550. It cannot be seen from Highway 550. The photo was taken from CR 23. She showed a slide of a house off of CR 14A. The Forest Service required the owner to cut down trees for fire mitigation. There was a time when you could not see this house at all from CR 14A. Today you can. She showed an entire subdivision, Panoramic Heights, shown from CR 14A. Many houses in this subdivision could potentially not conform. She showed a slide of a house in Idlewild that currently conformed under the current Section 9 and could not be seen from Highway 550. It would no longer conform as it would be seen from CR 23. The last home that she showed conforms. It cannot be seen from Highway 550 but she showed a view of the house from CR 906 where it was obviously visible and breaking the skyline.

From a real estate standpoint, if your home is a nonconforming structure you have a duty to disclose that. The real estate professionals will require it. If you sell your house on your own, you can do that but they strongly recommended that the seller disclose to the buyer that it is a non-conforming structure. If you do not and your buyer goes to make a change to the house and applies for a building permit and finds out that it is a non-conforming structure, the next voice you hear will be his attorney.

The Planning Commission has often said that homes in the visual impact corridor have higher property values. That was true, but for only one reason and that was because of the prime views. She showed slides of views from several county roads. That was why the property values of homes in existing corridors were higher than homes other sections of the county. It had absolutely nothing to do with Section 9. Being a nonconforming structure will have a negative impact on the value of the property because of the nuisance factor. She has Formica countertops and vinyl floors. When the day comes and she has an offer on the house the buyer will factor into the offered price the cost of changing to granite countertops and stone or wood floors. That is the nuisance factor. If you have a house that is a non-conforming structure in one of the new corridors, the buyer will factor in whatever it will cost him to bring it into compliance.

Another thing often mentioned was that if we do not expand the corridors the quality of life in this county will be compromised. From 2000 to 2011 there were 144 homes built in this county outside of the visual impact corridor. These 144 homes are not a blight on the county and the quality of life has not been compromised. No one came to Ouray County to destroy it.

Lower property values will mean less property tax revenue for the county. This will affect the schools, law enforcement, Social Services, fire protection, EMS, the libraries and road maintenance. If the deficit is large enough, the Board of County Commissioners will ask for a mill levy increase that would mean that property taxes throughout the county will go up. In her opinion, that was the real effect on the quality of life in the county.

Vacant landowners may find that they cannot build on the lot where they planned, the view they paid for may be compromised, the cost of construction to conform to the regulations may be more than anticipated, and the value of their investment has been diminished and the resale value of the land has been potentially diminished.

She reiterated what the real estate community said in August 2010. This is a solution in search of a problem. This whole process started in October 2009. Almost four years and untold resources have been spent to overhaul a provision of the Land Use Code that has been working very well. Minor tweaks that may have been necessary could have been easily accomplished by the Ad Hoc Committee who offered their services to the then BOCC comprised of Commissioners Padgett, Meinert and Albritton. They were rebuffed. This was never about fixing a problem. It has always been about those forces in the county that want to control what you can or cannot do on your property. *[Whiskeman submitted her presentation.]*

Bob Larson with the Air and Mineral Resources Group at the Camp Bird Mine gave some background about the people who were going to talk and began a PowerPoint presentation. He is a mining and geological consultant. His company is Monadnock Mineral Resources. He has been a resident in Ouray County since 1973. He was on the Planning Commission from 1985-1987, a County Commissioner from 1987-1991, and he is the current Ouray County Surveyor. He participated in the Bottoms-Up Economic Development Committee and he is on

the Steering Committee for the Uncompahgre Watershed. The area his group was most concerned about was CR 361 from Ouray to the Camp Bird Mine. He showed an oblique photo, a Google photo, looking back at the mine where CR 361 turns into CR 26 and oriented the audience to where the Camp Bird Mine is located. According to Larson, the map that was presented with information showed a few mining claims but it was not very accurate. He showed a map of all of the claims and pointed out the Camp Bird claims and the Revenue-Virginius claims, adding that there were a lot more claims than were shown on the map that was presented.

He showed slides of a few structures that existed historically to show what was needed and necessary for the mining community. At the 3-Level he showed a picture of a boarding house, there was a mill at times, and the portal going into the Camp Bird vein. CR 26B now comes right beside this and it would be impacted tremendously if something like this needed to be done there again. If it was on a bench, the exemptions would not apply.

He showed a picture of a mill on 14-Level, a mill from the 1940s, and what it looked like from the 1960s to the 1990s with federal resources. These were the kinds of structures necessary for the mining to be done in that area. He showed an overview of the property showing the buildings. He showed the Manager's House that was built in 1902, remodeled in 1980s, and the Camp Bird Mine had plans to do work on the building in the near term. He showed the house and the office across the road from it and pointed out that CR 361 goes right between the buildings. They worked on restoring the office building in 2012 and had more work to do. They were trying to restore them, and in some cases restore them for the public, but with these new restrictions it would be very, very difficult. He personally was opposed to the changes because mining was a part of the history of the county. It was the miners who built those roads so that they could access their properties. They built infrastructure and provided economic development throughout the county. He asked not to add in all of these access roads going to the mines. Leave the main corridors the way we have them and the way the have been defined. From his point-of-view, mining is the future of Ouray County. Today, there are over 100 jobs in Ouray County associated with mining. A year ago they asked Ouray County to encourage re-development of mining so that there would be a diversified economy in the county. They could provide jobs for their children and grandchildren for those who want to live here. The new companies were just getting their projects started. The Ruby Trust, Greyhound, Mountain Top and others were trying to get started again. They were asking for support for these efforts. They did not want to implement new regulations that would discourage, hinder or prevent this positive and much needed development. It was interesting that in the official visitor's guide for Ouray it described a real mining town surrounded by majestic beauty. They want to keep it as a real mining town and they wanted to protect the beauty associated with it but they wanted to be able to develop the natural resources.

Tom Sylvester from the Grand Junction area is a consultant for Caldera. A list of his credentials is on the slide presentation. In reviewing the proposed regulations the first thing that strikes him is how far-reaching they are. When comparing all of the roads covered it would be easier to list the roads not covered. The County's preamble said, *"...values that have traditionally characterized and defined Ouray County."* The visual impact regulations only address the visual and scenic values. Any regulation purporting to protect the values must include all such values. As such the mining tradition must be recognized. Mining established Ouray. Mining and ranching have been the traditional characteristics that have defined Ouray County's past and need to be maintained and encouraged when considering any regulatory impacts. There are exceptions listed under Section 9.2. for agricultural and mining purposes. That sounds good so far. Then it adds, *"...and not located on a bench, ridge, escarpment or hilltop"*. The second part virtually eliminates the first part. About the only place left to build is a slope and in order to build there you have to have a flat area that is going to be excavated into a bench. You need to leave out the exceptions to the exceptions. You also need to better define "*accessory structure*". His dictionary defines accessory as a secondary structure. Would that mean that the main ranch house is not included? Is this another exception to the exception? Or the main mine office or the mill? What does exclusively imply? Does that mean that a rancher who may rent out a bunkhouse during hunting season would be eliminated from the exception? Or a mine with a historic museum and tourist shop would be eliminated? There were other places with vague and imprecise language that is rife for misinterpretation for misuse by this Board or any future Board. It is almost like the intent is to eliminate mining and other industries from the county. We need the jobs. He speaks from personal experience having made the difficult decision to move away from Ouray County when he could not feed his family on blue sky and scenic vistas. Our country is still recovering from the worst economic downturn since the Great Depression. Mining provides year round high paying jobs. The Colorado Mining Association's recent annual report states that mining has contributed

$6 billion in direct contributions to Colorado's Gross Domestic Product. The state's mining workforce earned an average wage in 2010 of $78,000, 63% above the state average wage of $48,000. We need to ensure that our regulations encourage economic growth and prosperity, not hinder it.

Lezah Saunders noted that her credentials were listed on the slide presentation. She had the opportunity to re-entrench herself in the mining community where her family started in 1896 at the Revenue. Any mining facility is resource dependent. It is not selective. Those owning a mining claim and/or operating a mine did not have the ability to pick and choose where they would like to develop the resource as the Code would suggest. There is inherently something wrong with discriminating against and/or over regulating any industry or individual solely based on the location of their land. When did discrimination become okay? Because it was not okay in the mining industry. Over-regulating the ability to construct buildings on private property beyond sense and reason was not appropriate. One must question the coherence of such proposed regulations if *"...the Planning Commission may seek qualified outside professional assistance to review the applicant's proposal."* That is stated in Section 9.5. B. How does the County expect any individual to comply with such regulations if the committee that wrote them did not understand them? It did not make sense. Lastly, she also participated in the Governor's Bottom Up Economic Initiative and there was resounding agreement that mining was an important industry – historically, currently and in the future – for the year round economic development of Ouray County. The consistent well-paying jobs will provide economic stability to the county and the region only if regulations are not compounded on the people and the industries that are here to offer those jobs. All three of the speakers went to Mines *[Colorado School of Mines]* and her definition of "*contradiction*" is *"logical incongruity; a proposition, statement or phrase that asserts or implies both the truth and falsity of something."* Highlighting an industry such as mining to enhance the economic development of Ouray County and then creating more regulations to inhibit that opportunity is truly a contradiction. It is not appropriate nor should we accept the County that serves us to create such contradictions and try to sell it to us. A contradiction such as this is insulting and unacceptable to her. The proposed regulations are not acceptable. There is no logical conclusion that any of them could render that the adoption of such changes to the visual impact regulations should be accepted by the county. It will only take us down a very slippery ridge, escarpment or a hilltop only to lead us to impact on the bench, and it will injure Ouray County for years to come.

Doug Macfarlane, an architect, has been working in this community for sixteen years. He worked on designing over fifty houses in Ouray County. He worked on numerous remodels and additions, and he worked with the people who enforce the Code in Ouray County and he was very familiar with the current Code. He was here to speak as an extension of the Ad Hoc Committee that offered input to the BOCC when this process started at the BOCC level and at the Planning Commission level as the process went forward. The process deals with complex regulations. In terms of background, the Ad Hoc Committee offered recommendations to the BOCC. They felt that regulations are important and the scenery is precious but felt that the current Code is working well to protect those things. They suggested minor tweaks to make it simpler and easier to understand and thereby avoid unintended consequences. They had worked with the current Code and were comfortable with it. The major highways and primary ridges that form the main valleys are already included. They felt that adding new corridors is not justified or required to continue to protect the county. They identified problems with skyline regulations that they highlighted at the meeting had not been addressed in the context of adding 44 new roads. There is a high likelihood that these can come back to create issues, particularly on lots with non-ridgeline type skyline breaks.

He did not have time to go through the specific concerns he had. He felt that the proposed regulation has become more complicated and harder to understand, as well as introducing more subjective components. When you combine that with the new components it takes time to test out how new wording would be interpreted and how things would actually be implemented. The biggest single area of concern was the fact that adding all of these new corridors relative to the skyline regulations creates lots of ramifications for both existing structures and for vacant land. When you try to address the skyline break issues like identified in Pleasant Valley and other current corridors, these would quite likely crop up in the proposed new corridors. He conceded that there were portions of the draft that made an attempt to address these concerns but he felt that they fell short of providing a fair and workable solution, and they left a lot of question marks as to how the regulations would be applied. It relates to newly-created, non-conforming structures with regard to bench, ridge and escarpment and there was interpretation as to how you define it, who thinks what about what those terms mean. If you are only allowed one shot and, for example, have a small, one-thousand square foot ranch house

without a backdrop that you want to add onto it, you could add two hundred square feet. Anytime you apply hard rules you need to have done due diligence on why, and confirm that the public will was behind it because these were real values that you are taking about. That applies to both structures and vacant land.

There was a difference between a house on a ridge top that the current Code did a good job with, and the other aspect of skyline where you are close to the road or where you do not have a backdrop, you are in a field and skylining against a backdrop that may be the bottom of a valley. Examples were houses in Dallas Meadows. The selection of these houses had nothing to do with whether they were in the current corridor, a new corridor, whether they were built before or after the current Code, but they were examples of what he called "*ancillary skylining*" in his presentation. These were all examples of not the classic house on the ridge kind of skyline. He argued, in many cases, that with this type of skyline break the house was often prominent whether or not it jumped into the sky. The point is that if you own a home like this or own a parcel and the only place to build is where that happens, you have troubles with the new regulation.

He offered a few other comments. When the Code talks about giving you a break and the ability to site the house, it says that if there is no other place where you can put the house, you get an exemption. But what it does not say is if you have a view or not, do you have solar access, privacy and proximity to neighbors; all of these things were not listed as pieces of that puzzle. It seemed to him that you may be required to build in the low spot where you will not break skyline. It did not say that maybe you would have to build a one-story house or let it dictate the roofline. To him, you should be concerned about those things. Changes to allow uses on property purchased in good faith, you should be able to rely on that unless there is something that rises to the level of being such a problem that the whole county takes note. This process has not shown the level of emergency that would allow the County to site your house on these new corridors, to stop you from skylining.

The point system was very complex. There were good concepts in there. Average height is great. The new system is a little more restrictive than the old system pieces. It removes six discretionary points from landscaping and put in other pieces and parts that were good ideas, but in the slides in the Staff explanation, you saw the houses with the simple plain vanilla getting 2.5 points just because it has a roof overhang, a door or a window, stairs, and your roof and walls are in a different color. It is missing the point of why massing was suggested by architects involved in the process. It was about trying to find a simple way to make design important to the point system but when it becomes that simplistic it is not worth putting in there. If you get 2.5 points with that rudimentary of elements, then he said, "*Leave well enough alone.*" It was not worth making it more complicated.

He thought that there was information spreading around that it would not cost much to change the color of your house but if you make the Code applicable to many more building sites and existing homes by adding the new corridors, then those houses will have to have story poles, you will have to calculate the percentage of screening, and average building height. This would require additional Staff time and additional time and expense on the part of the applicant. Story poles and design alone can run into thousands of dollars. Hard costs can include design changes to reduce the building profile. Maybe you are forced to site it in a location that does not require views. Maybe you have to go single story or terrace that could add thousands of dollars to the construction costs. If you are forced to increase the distance from the road based on siting that could increase the costs of driveways and utilities. These are real and significant costs in his opinion. The intangible is, if you bought a lot in good faith and thought you had a great view, and now you don't get to build there, that would sharply and deeply impact the value of the property, the resale value and, possibly the worst, if you have a lot with uncertainty as to whether someone can build on the spot with the view, the question arises and a fear factor comes in as to whether you will be able to recoup the value that you paid when it did have that valid building site. That said, there were a lot of cost issues, and uncertainty was one of them.

Implementation and enforcement of inherently complex subjects relies on Staff learning what is going on, the design professional learning what is going on, and being able to confidently predict how something is going to be enforced. Large-scale changes to codes such as this are really scary to him because he could not confidently advise someone of how things would be interpreted. He and the Ad Hoc Committee strongly urged that this draft not be adopted in the present form. He thought that there were ways to tweak it, make it better and do that over time.

Andrew Mueller is here tonight as an attorney for Wolf Land Company, L.P. and Wolf Cattle Company, Inc. This group consists of family members who own over 10,000 acres in the county, ranch lands throughout the

valleys, ranches and employees who will all be impacted by these proposed regulations. The Wolf family asked him to speak on their behalf. They were very concerned about the county and the visual impacts that exist today and the potential visual impacts that could exist in the future. They, together with the other large ranch owners in the county, are the real reason for the preservation of our county's expansive agricultural vistas, the working landscapes that so many of us refer to as our open space. This is the private property of these ranch owners who had without regulatory oversight or enforcement preserved the open space that all of us in the county enjoy. It is not the provisions of the Land Use Code that exist today or that we would like to enact in the future that have preserved that. They are opposed for several reasons. They see no need to fix something that is not broken. The system that exists today with perhaps a few minor tweaks as Macfarlane and the Ad Hoc Committee pointed out years ago is effective and it works. We have a very beautiful county with very few homes that some of us would consider a blight. We have almost no homes that everyone in the county would consider a blight. The expansion of this to an additional 44 county roads where we have 9 currently under regulation is completely unwarranted and creates undue hardship on the large landowners in the county. With respect to Wolf, the ranch manger pointed out that they have at least four homes within 100 feet of the new corridors that are being proposed. These are not trophy homes; these are homes of very modest style that their ranch hands and/or tenants live in. These are traditional ranching homes that were built long before there were visual impact regulations in the county. These homes are well cared for and that no one would consider a blight. Several of their homes were less than 1,500 square feet. Under the current proposal they would not be able to add any more than 300 square feet because they are within 100 feet of the county roads. That is an absolute mandate in the proposed Code. That is not acceptable to the landowners. It should not be acceptable to you. The 20% number being proposed is very arbitrary. There seems to be no logic behind it. The Wolf family is prepared to fight it if this is adopted. While the Wolfs have never developed their property for residential development, they understand that times change and generations change. They may have to sell their property. Just as Donna Whiskeman pointed out, if they try to sell their property they will have to disclose that these are non-conforming structures that the people who buy them, for example a family with five children, would not be able to fit in that 300 feet that could be added on.

The Wolf families did not see any remarkable problem or pending crisis in the county. They think that you are proposing regulations for a problem that does not exist. Another example is that you have added fences to the concept of regulated structures. There are a couple of reasons why Wolf as an agricultural operation finds this to be not acceptable. Any fence over four feet is a regulated structure in the new proposed Code. Wolfs, as well as all other ag users in the county who are legitimate ag users, have fences around their hay storage areas that are often ten to twelve feet tall. It does not matter that they are 75% transparent under your proposed Code; they are over four feet and would have to go through a visual impact regulation to build a fence around their hay storages. That's crazy. It's abhorrent to the agricultural community. Another example is the aspen pole zigzag fence. Those are less than four feet most of the time. Those fences are not 75% transparent. Anyone who would want to build one would have to ask Castrodale for approval to build a zigzag fence.

It has been talked about but you have added twenty new definitions or clarifications, and they are not helpful. They create a more subjective situation. The definition of a ridge line in the back of the proposed Code… you use the term ridge, not ridge line, to talk about when agricultural exemptions exist or don't exist. Your Code is not consistent as proposed and as written.

Another reason they are opposed to this is because the cost of doing business in the county would increase as a result of it. It means that the Wolfs or you will have to hire architects or lawyers every time they want to build a hay shed, a fence or add onto a house. It was not okay. For the County, we are talking about almost five times the number of roads than are currently under the Code. It is very burdensome on County Staff and would be either non-enforceable due to the fact that they would not be able to spend any meaningful time on these applications, or the County would need to raise money either through fees or new taxes to pay for new Staff to handle this new caseload. It is not fair to say that it will not impact us fiscally. The fact that a landowner in all of these new areas must submit a visual impact plan that would consist of an undefined number of maps and the supporting documentation detailing the visual impact mitigation measures to comply, will give a tremendous and undue discretion to the County Land Use Staff. While we may be comfortable with our current Land Use Staff after we overwork them and run them out we'll have new staff. And when they come in they may say that rather than one or two maps, now we would like six different maps showing all of the different perspectives, all of which they would be allowed to under the definition of what a visual impact plan is. That area of the Code needs significant work before being passed along to the Board of County Commissioners.

Another concern of the Wolf family is the lack of architectural independence and personal expression that these lack in the proposed regulations. Architecture is a beautiful thing. To have the County Land Use Department dictate the shape, the mass, the color of our homes in new and expanded areas of the county is not acceptable to private landowners like the Wolfs. They believed that it was the right of an individual to express his or her own opinion and thoughts to design their own home. These regulations that make earth tones mandatory are not acceptable. The Code states that there is an exterior color requirement. When you read the regulations it says that these homes must, shall, use earth tones that are defined in the Code. While there are times when personal and individual liberties may have to be compromised for the greater good, no one has shown the need to take these liberties away. There is not a crisis or visual blight throughout the county, nor is there a threat of that. One of the particular things bothering the Wolf families and their entities is that homes which did not blend and were built prior to 1920 are in some way superior to homes that do not blend and are designed today. That is an extremely arbitrary and subjective statement. What you are saying is that somehow people before 1920 had a sense of style and taste and we should let those people dictate what we build today. But today we don't have that sense of style. We don't know what's good for our own area. As a result of that we're gonna say that that the last 93 years despite all of the technological advances, despite all of the energy-saving advances, you are going to have build the same home that a family built in 1911 if you want it to be white or red. That doesn't make any sense at all. In fact what that shows is that this whole Code proposal is very subjective, very personal, and very much about controlling other people's property and design choices. The definition of apparent building mass may make sense to Doug Macfarlane and Mark Castrodale but to anyone else in the room who looked at it, it meant that every owner of a property inside these visual impact corridors will have to hire Doug or someone in his profession to explain and design it, even it if is a hay shed or an agricultural building, because it is not readily apparent to the rest of us what that means. That is not the type of code that should be enacted because regular working people cannot understand it and you should not enact a code like that.

Wolf Land Company owns a significant amount of land in the county and a lot of that is on escarpments. The new way to measure is, if there is an escarpment and it goes into the property you measure fifty feet from the area where that escarpment goes deepest into the property. It is defined as by lot. It works if you have a little PUD with three or six-acre lots, even thirty-five-acre lots. Wolfs have a thousand acres on the south rim of Log Hill Mesa. That is one lot under your Code. That is a two-mile escarpment line. If they wanted to build one house on that thousand acres they would have to take the furthest and deepest point and go fifty feet back from that. It may be half a mile from the escarpment that is right in front of the house but it is not something that they would be able to do under the current Code. They would be impacted tremendously by this regulation. Currently, the Staff measures the closest point of the escarpment to the structure, that's the fifty-foot setback. What you are proposing is a tremendous impact on people like the Wolfs on a one-thousand-acre parcel. He couldn't imagine that was the intent and they would ask that the County reconsider that provision and that definition of the Code. It doesn't work for large landowners and creates a very hard situation.

Lipton advised that that concluded the fifteen-minute presentations. They would now go to the individual, three-minute presentations. He explained that he would alternate between pros and cons, and those who were undecided.

Craig Jackman lives in Colona and has had a farm there for the past 18 years. His concern is on asking for clarity on the exemption. The exemption says that all building permits except for the following; it's the accessory structures used exclusively for agricultural purposes. He would ask the Planning Commission to consider saying used *primary* rather than *exclusively* for agricultural purposes. He was not sure, his understanding on reading it was that hay barns, hay sheds, that these things on farms are not intended to be, they are exempted. So, the color, the placement, the setback, those things would not affect farmers and ranchers and where they build and place their buildings and the architecture of them. That was his reading of this. He asked if that was correct. There were comments tonight that implied that these regulations would impact the color and limit the choices, and apparently that's not the case. He thanked the Planning Commission for clearing that up.

Rein Van West has been a resident of Ouray County for over 10 years. He lives on CR 5 in a non-conforming structure. Tonight he is speaking on behalf of Ridgway-Ouray Community Council (ROCC). He noted that ROCC had submitted a comment letter. To summarize ROCC's position, the citizens of Ouray County overwhelmingly support the preservation of the county's scenic beauty and vistas. This is why most new

residents come here to work and live and why tourists visit. In short, the stunning scenic vistas underpin the tourist economy and future residential and commercial development opportunities. Understandably then, the promise of the Master Plan is to "*maintain strong visual impact regulations.*" Almost everyone agrees that the current visual impact regulations are good but that there could be some improvement. Presently, they don't apply to some of the most scenic and tourist visited areas such as Yankee Boy Basin and other high country areas. Certainly ROCC appreciates the tremendous effort that so many people have put into updating the County's visual impact regulations. ROCC generally supports the Planning Commission's proposed revisions as an overall integrated package. In particular, ROCC supports the addition of blending as a required rather than an optional part of the visual impact regulations. ROCC also supports the addition of new visual corridors in the county. Where they differ with the revisions that are being proposed is that ROCC believes that the visual impact regulations will be watered down by the proposed exceptions for non-conforming structures and existing subdivisions. The best way to address these issues is through a variance process where the BOCC can craft an exception for a particular home based on its own facts and circumstances. The Planning Commission proposed exceptions would likely have unintended consequences by allowing construction that conflicts with the goals of the Master Plan to slip through the cracks. Ouray County has maintained visual impact regulations since 1987. Where they have been applied it has preserved our unique and beautiful landscape for the enjoyment of all. It has done this without stopping development, harming property rights or making it too expensive to build. It has instead protected everyone's property values and the public interest by preserving our natural scenery. So, now is the time to update the visual impact regulations to position Ouray County for smart and responsible growth.

John Meltzer is here as a property owner and wanted to ask the Planning Commission to reconsider what they presented. He had two properties that would be added because of these roads that have been added. That would be a dramatic decrease in his value. Also, he represents a number of property owners in Chalet Hayden up the Camp Bird Road, there were eighteen lots there and 90% of them would be affected. Many do not have homes on them yet. The subdivision was formed some thirty-five or forty years ago. A number of the lots are lots that people plan to build on. Many of them are exposed to CR 361 and he was not sure that they could afford to meet all of these requirements. He asked them to please, please reconsider what you have presented and either drop it or dramatically cut it back.

Jane Nash has lived on Log Hill for ten years. Her husband grew up on the Front Range and they were both graduates of Colorado State University, as well as their two kids. When they started talking about retirement they wanted to get away from the congestion and overdevelopment of places like the Front Range and the I-70 corridor where there had been absolutely no regard for regulations. Her husband took the night atlas, found the Colorado page, and looked for the darkest spot in Colorado, which was Ouray County. Thanks to the Planning Commission who sponsored something called the Dark Sky Ordinance. We are fortunately not among the 98% of Americans who no longer see the Milky Way. It was that forward thinking that led Ouray County to protect the night skies. She heard a lot of really good arguments this evening. We are from a variety of backgrounds, interests, concerns, but all agree on the beauty of this county. We are fortunate to live in not only one of the most scenic states in the United States but what she considered to be the most beautiful part of the state of Colorado. It is that scenic beautify that holds us here. It draws us, it draws our friends, our families, visitors and it draws development. Until this time there had not been a huge draw for having lots of regulations because there haven't been that many people. When the ranchers and miners were here and things were done on a handshake... that was really good. She thinks that we need to pay attention to the Master Plan of the county and she thanked the Planning Commission for taking three years to tediously seek input from all parts of the community to come up with the draft that she strongly recommends that they submit to the BOCC.

Ethan Funk said that everyone had been talking a lot about buildings but he wanted to point out a flaw that he saw with both the current and proposed Land Use Code, and that is in the definition of a structure. A structure is pretty much defined as anything that is man-made. That could be a mailbox, that could be a building, that could be a utility box, or a tower. The concern he had with that, right now the restrictions limit structures in the visual impact sense. He thought there needed to be consideration for impacts on things like utilities. Right now it is very difficult to put any sort of structure related to utilities in the visual impact zone. That was okay because there were plenty of other zones where you could put facilities. If the visual impact zone is expanded and the definition of a structure is left intact as it is, utility boxes would be very difficult to place in most parts of the county. He did not have a problem with the new visual impact regulations but with the definition of the existing

definition of a structure and how that corners and restricts utility development and things that aren't related to housing and building or development, which he thinks is the intent of most of the visual impact stuff. So, he would like to see either a definition change or some means to provide a work around. He understood that there were visual impact areas right now that the county wanted to preserve. Right now there is mostly a way around that. You can reroute gas lines and telemetry equipment associated with that, you can reroute telephone lines, but if the visual impact corridor is expanded, where would we put that stuff. We don't have places anymore to put the things that we don't want visually but we actually want as a society. In general his request is that we take a look at the existing and the current Code definitions and see if we can find a way to make things workable. Instead of telling people that things can't be done let's find ways to make them work so that we can achieve the goals we want in terms of visual impact but not creating a no, sorry, that can't be done situation.

Lyle Nash stated that he and his wife have owned property in Ouray County for 13 years. They finished building their home 10 years ago. They came not only for the rural, low density environment, but also because they thought that this was the most beautiful part of the most beautiful state. He grew up in Loveland, Colorado so he has first-hand knowledge of what unrestricted, unregulated looks like. It is not very pretty. When they moved here he was happy to join a community that had a Master Plan that respects and attempts to maintain the natural beauty of this place. He was happy to say that they lived in a dark sky county where they could still see the Milky Way. There are those who are concerned that the visual impact regulations will have an adverse effect on their property values. If we examine a few facts you will see that these things actually enhance and increase the property values not harm them. The data from the County Assessor's office show that most of the highest valued properties in the county lie within areas that are currently regulated by existing visual impact regulations. In fact, of the 100 highest valued residences in the county, 82 lie within the current scenic corridors and have been subject to the existing visual impact regulations for years. This factual evidence suggests that regulations actually enhance property values. The fact is, buyers are willing to pay a premium to live in or near protected scenic areas. Real estate agents routinely use the scenic characteristics of the property to set prices and to market properties in Ouray County. The fact is, the stunning natural beauty of our county draws tourists from around the world that provides the foundation for our local economy. A strong local economy supports higher property values for everyone. He thanked the Commissioners for their hard work on the visual impact regulations that demonstrate their continued commitment to protecting and enhancing the property values of all Ouray County residents.

Steve Martinez asked how long the Planning Commissioners had been on the Planning Commission. He heard that they had all worked for three years on this and he read a couple of things in the paper where there have been people that have just up and left the Planning Commission, and how diligently you have worked on this. He did not know if he could trust what they were doing now because he knew none of them except for Karen *[Risch]* and he had no idea who the rest were. He had not seen anything from anyone else and had not read anything where he would recognize the names and faces. He was just curious as a lifetime resident of Ouray County.

Barbara Seeley thanked the Planning Commissioners who were unpaid volunteers and for the last three years had been contributing hundreds of hours as a service to the county and at the request of the BOCC. She and her husband purchased their home nine years ago. They knew they wanted to be in this part of the state and were driving down from Montrose on Highway 550 and, as they approached Highway 62, she told her husband to pull off the road; this is it. They had a house in less than two months after that. The driving force in the decision was location, location, location. The natural scenery really drives the tourism which is the foundation of the economy and a vital element of the county going forward. The methodology for assigning points that was explained today shows that there is an improvement and consistency and inflexibility. The requirement for the regulation to preserve and protect the natural scenery is a requirement of the Master Plan and she recommended that the proposal go to the BOCC as presented.

John Peters thanked the Planning Commission for the opportunity to express his concerns regarding the proposed regulation. He was a local planner who had successfully processed numerous planning developments within Ouray County, southwestern Colorado, both eastern and western United States, and numerous countries abroad. His livelihood depended on code and regulation. Without clear and concise code, or as he put it predictability, quality design cannot and will not take place. "*Regulation*" by Webster is defined as "*the act of regulating or the state of being regulated; an authoritative rule dealing with the details and procedures having the force of law.*" In order to enforce regulations you must have a regulator or one who governs according to the

rule. In other words, an interpreter that brings order, method and uniformity to the regulations. In this county the interpretation of the proposed revision presented here today would first fall upon the Planning Staff, then the Planning Commission, the Board of Visual Appeals, the BOCC, the Board of Adjustments and, possibly, the courts. This process that is set up to protect both property rights and the community at large is dependent first upon precise and clear language of the Code and second on the ability for clear and precise interpretation. Ambiguity should not and cannot be part of any good code or regulation. As a member and acting chair of the Board of Visual Appeals interpretation of the proposed amendment will eventually come to that board and they will have to recommend to the BOCC if a land use or building permit meets the intent of the regulation and, if not, what recommendations they can give to mitigate circumstances. How do we, as well as the others, interpret the proposed regulation when riddled with vague and ambiguous language. Do we as the citizens of Ouray County want our properties subject to whimsical interpretation by governing authorities that can overreach the intent of the Code due to poorly written regulation? This Commission was tasked with a very difficult challenge of reviewing the existing Code that performed well but was not perfect. After a one year review by the BOCC, followed by two years of review by the Planning Commission, all at a tremendous cost to the taxpayers of this county, the proposed changes not only significantly span the complexity of the Code but will leave this county subject to continual interpretation and future litigation. The current regulation has done a wonderful job of protecting the scenic beauty of this county. This statement is authenticated by how few applications ever reach the Board of Visual Appeals. He did not believe that the proposed modifications presented today are necessary or effective; therefore, he humbly requested denial of these regulations.

Mike Cassidy had been a resident for nine years or so. He appreciated the Planning Commission's enormous efforts. One thing that is important to him is the fact that the Planning Commission used a lot of facts, they went out and examined actual locations, and they made some efforts to compromise. The proposed regulation as it stands now is quite a bit different from what you may have first begun to do. This demonstrates your attempts to take into account the comments of a lot of people. He suspected that the Planning Commission heard some comments that may cause them to make some additional changes. That's fine if that's what it turns out to be. Long ago as a graduate student he was on the Board of Directors of the Wesley Foundation and some rule would come up and one of the people would say, "*We don't need this rule. We all know what we want to do.*" The director or senior administrator would reply, "*That's because you're all fine people and I trust you but who knows what will happen twenty years from now.*" Several of the opponents have said that we don't need these regulations; everybody who lives here will do the right thing. That might actually be true. There are a lot of other people in a lot of other places who would like to come here who are not the same as you and your neighbors today. If you have lived other places like he has, you would have seen people doing incredibly foolish things. A beautiful town in Texas had a fellow who decided to build a castle in the middle of a neighborhood. And he did. It was a castle built out of cinder blocks, four stories high, 8,000 or 9,000 square feet, next to people who had normal homes just like all of the ones around here look like. The values of the two houses immediately next to him dropped by $100,000 or more instantaneously. It is easy for us to say we are all good neighbors and we'll all do the right thing. Don't expect that everyone else will do the right thing in the future. Part of the reason we need regulations is to protect us from what some outsider may come and do. He appreciated the Planning Commission's efforts so far.

Richard Kersen appreciates what the Planning Commission has done but strongly disagreed. There had been, obviously, four groups who presented very good testimony to the works that are inaccurate. He could not add to what was said but people come here from outside of this county and they want to change it. We do have a scenic beauty but he guaranteed that not one of these people drive down Highway 550 and look at the house on the side instead of looking at Abrams. You are very inaccurate. What you have come up with is not consistent. We have a Code that works and he would like to see that Code remain as it is.

Dave Jones and his wife recently retired and after looking at houses in Washington, Southern California and the California coast, New Mexico, and the Front Range they discovered Ouray County and two months later they bought a house here in December. They fell in love with the beauty of the setting and when they stopped to take a deeper look they were really impressed by the people and the vision to keep this county beautiful, and that was what sold them. They felt confident about making an investment in the community. Ouray County has shown great vision in protecting the scenic beauty and they commend the county's citizens and their representatives. How setbacks, preservation of ridgelines, the use of earth tone colors, all helped to preserve the superb setting. This is a visionary county. For him and his wife, the continuation, clarification and some

appropriate expansion of the county visual impact regulations made sense in keeping Ouray County a tourist destination and a great place to live. Some valid concerns had been raised and should be addressed but overall the positives of the regulations outweighed the negatives. In Washington, D.C. in November, when they were preparing to move he received a note from a friend and their boss, who learned that Dave and his wife were moving to Ridgway, wrote, *"We know Ridgway very well. We were there just a month ago. As you must know, the area around Ridgway is one of the most beautiful in the world all year long, especially in late September and early October as the aspen turn. We've been to the area four out of the last five seasons."* That type of recognition made Jones proud to live here. In large parts, it's the beauty of the county that makes this a great place to visit and to live. This isn't easy. Clearly, it was a great discussion tonight. He and his wife wanted to thank the citizens of the county who had the foresight to protect the beauty that we have. They greatly appreciate the hard work that the Planning Commission has done and they don't think the community will ever regret those efforts to maintain our visual impact protections.

Robin Gregory thanked the Planning Commission for providing this opportunity. He is a new neighbor. They received their final inspection on their home in Park Estates. He is not in favor of these changes. He shared a few things that he shared with the Planning Commission in a letter that he sent earlier. One of them was empirical evidence that he thought supported that this will harm home values here. He and his wife began looking at their property in September of 2009 and made an offer on it. They knew it was about 200 feet beyond the Highway 550 visual impact corridor and the offer was flatly rejected. He thought it was fair but it was rejected. He told his wife that this is an interesting area. There is about a four-month window for people to sell their properties and then it's over. No one will see that property for another eight months. They waited until the next June and sure enough it was relisted. They made another offer. They learned in the interim that these rules were being proposed to change already robust rules. The new offer was accepted immediately and was at a 20% discount from what they would have paid nine months earlier. His point is that what happened to the market in that time. He talked with the planning group here who said that the rules would probably not go into effect for about twelve or eighteen months. That means that the whole market for this property that would now potentially fall into a visual impact corridor has just been reduced to people who could build safely within about a twelve or eighteen month period, and it put pressure on the other property owners. Of course, he benefited from that. They bought the property and built their home. Even though it is outside of the visual impact corridor they pushed it back fifty feet from the ridge setback on a very prominent ridgeline. Had the property been within the corridor they simply would not have purchased it, they would not have spent the hundred nights that they spent at motels and restaurants while building here over the last two years.

Jennifer Parker has lived here for seven years. Overall she supported the proposal and thanked the Planning Commission for volunteering countless hours to present these thoughtful and fair changes to Section 9. The Planning Commission's efforts to seek to reflect the principle premise of the Master Plan, which is to allow only that development which is responsible is commendable. Its goal is to allow gradual growth in a manner that does not harm the county's irreplaceable scenic views. Having said that, it concerned her that in an effort to reach consensus, two things occurred: 1) the process was lengthened considerably, and 2) regardless of the compromise that the majority was willing to make, the minority did not meet them halfway and offered no detailed alternative. Secondly, as a result of this, the proposal was weakened unnecessarily. Therefore, she requested that the Planning Commission consider including all county roads in the proposal. She could still remember an evening in July at the County Courthouse some years ago when a spokesperson for the opposition to Section 30 stated clearly that the county has good regulations that needed to be fairly applied across the entire county. She asked why this was no longer a valid position. What had changed? This proposal certainly makes it easier to build and to remodel, and speaks to many of the concerns here, either raised here tonight or raised in other forums. It seemed absurd to her to impose a regulation that relaxes the previous one that has worked, and worked well, for fifteen years, so much so that in those fifteen years, there had been only three variance requests, two of which were granted and one that was denied due to safety, not for visual impact regulations reasons. In conclusion, you have done an outstanding job. Perhaps, the majority have been a little too cooperative in their efforts to reach a consensus and it is her hope that you will strengthen the proposal by adding all of the county roads, either narrowing or eliminating the exceptions that weaken this draft.

Larry Coulter moved here 34 years ago not to retire, but to work and raise four kids with his wife. He builds custom homes, and has for most of those 34 years. Several have been in the existing view corridors. He appreciated this opportunity to speak tonight. As a builder having to conform to Section 9 since its inception, it has been a

complicated and cumbersome regulation to abide by. He was all for preserving the natural beauty of the surroundings but when a builder is getting ready to build for someone and was being told that their story pole showed that there was 15 feet of roofline breaking the skyline visible from a thirty-foot long stretch of the roadway, and are allowed only 10 feet of roofline to show against the sky, was he really compromising that beauty. At times, in order to conform to such minor infractions, he had to move the homesite location. At other times, he had to change the roof pitch or even call for a redesign of the house. This does not happen without some significant expense. He was sure that there were builders who had similar experiences even more bizarre than this. It would leave any sane person shaking his head in disbelief. This scenario happens time after time along the nine existing view corridor road and highways in the county. If these revisions are adopted, we can expect this nightmare to play out along forty more roads in this county. There is essentially not a building site that won't be affected. No doubt, some sites will be under scrutiny from more than one road making it impossible to conform. He owned one of those lots in Idlewild that is right between two roads. He has not built there yet but he sure would like to. Others here tonight were able to speak to this issue with more clarity than he could and had. He wanted to emphasize that, as a builder, he saw the revisions as a deterrent to a healthy economy in this county, an economy where construction has played a major role along with tourism, ranching and mining. We need to allow more than just ground squirrels to live here. He did not share the opinion that a well-designed home visible from a road should be considered blight. He considers most of the homes that have been built in this county as jewels that should be showcased and not buried.

Susan Husch purchased land off of CR 12 in 1997. She heard rumbling from the back that said that she was too new to have an opinion but she will give what she thinks, anyway. Her RE/MAX realtor mentioned that visual impact regulations were going through some revisions at that time but he said that it was more of an advantage than a disadvantage. When they were finally ready to build in 2009 the two lots to the south of them were already built on that allowed them to use personalized zoning to set their house and windows with awesome views of the San Juans and without having their neighbors in their line-of-sight. This is especially important to her lot because two to the south of her was the "*blue cube*" that did slip through the cracks prior to 2007. She appreciated the work that the Planning Commission has done over the past years with visual impact regulations. She and her husband built in the view corridor, they did not feel that the regulations were onerous or more expensive, it cost them no more to design for their site and use their stucco and stone that matched, and no more to buy a brown metal roof than a blue one. And because they went into the hill they did not have line-of-sight issues. When you are on Highway 550 and you look east, unless there is a lot of snow, you can hardly see her house at all. That was not true of the blue cube. She believed that tighter visual impact regulations are a great benefit to her as a property owner protecting her property values that had steadily increased since 1997. She believed that keeping the scenic value of Ouray County in the forefront in building and planning is helpful. Tourism is one of the county's biggest economic drivers. She thought that the current roads could be expanded a little more with deference to ranching and some of the other businesses. But, she very much appreciated knowing that the County regulations prohibit another blue cube or a pink castle from being built in Yankee Boy Basin or in front of her house.

Roger Pinyan thanked the Planning Commission for the hard work they had done but he questioned the direction they were going. He asked if it was true that La Plata County's Planning Commission had worked three years revising their Land Use Code and shelved it after three years and three-quarters of a million dollars. Obviously, he had a lot of questions as to the direction. Interestingly, you had a gentleman from ROCC speak. Pinyan asked all of the Planning Commission if they were members of ROCC. He looked at the Mission Statement for ROCC and he saw four surnames of current Planning Commissioners affiliated with ROCC telling him it was not true. He asked what the influence of ROCC was with their changes to Section 9 if four out of five are card carrying members. There was one person who was not. This direction is too complicated. He is fine with what we have right now.

Scott Williams of 372 Pleasant Valley Drive in Ridgway thanked the Planning Commission for their hard work on this really important issue. There had been a lot of scary talk tonight about non-conforming structures. He thought about it and his home could be non-conforming and it was built before the visual impact regulations were changed in 1997. He took a close look at the current rules and what the revisions would mean. The revisions would actually relax, to a significant extent, the current rules and expand the rights of the owners. In that regard he thought that the Planning Commission had bent over backwards to accommodate the issues raised with regard to non-conforming structures. In the case of rebuilding, if you have a fire for example,

Section 4 now requires that the entire structure must be rebuilt to conform to the entire Land Use Code if the cost of the rebuilt portion exceeded 50% of the cost of rebuilding the entire structure. There is currently no exemption whatsoever from the current visual impact regulations. This would be relaxed under the revisions. There would be a complete exemption for skyline breakage and the 100-foot setback in the case of rebuilding, as long as the building was not on a bench, ridge, escarpment or hilltop. This greatly expands the rights of owners if they need to rebuild after a fire. But, what about remodels, additions and expansions? It is important to remember that we are only talking about exterior changes, not interior remodels. The current rules say that if you enlarge or expand a non-conforming structure at all then you have to bring the entire structure into compliance with the entire Land Use Code. There are no exceptions to the current visual impact regulations. The revisions would add some exceptions for skyline breakage and the 100-foot setback that, to him, were the most difficult issues to be dealt with in the case of a remodel or an expansion. For reconstructions, additions and the like, the changes would significantly relax the current rules in important ways for the owner. After taking a closer look at this, he was not so scared after all. For other situations, variances can be requested. Personally, he did not think that the special exceptions needed to be included. The same situation existed in 1997 when the visual impact regulations were last revised. There have been very few issues with non-conforming structure and they have been addressed with variances that could be made to fit the facts of each case. Protecting more of the county is important if you feel that these exceptions are needed for adding roads that have existing structures then he supported them.

Ralph Walchle lives east of Ridgway. He moved here when his oldest boy was eight weeks old. He turned thirty-six yesterday. He looked around the room and there were probably a dozen people maybe that were here then. He did not think that any of the Planning Commission members were. The county has been habitated for a hundred years with no regulations. He came here for the beauty. Now y'all get to define the beauty. It is not a white house. It is not a red barn. It is something totally different. When he first moved here they looked forward to someday paying off the place. Thirty-four years later they have it paid off. He always wanted to build a house over where they could view both the Cimarrons and the San Juans instead of being tucked down in a hole, which was one of those non-conforming houses that Doug showed. They had one county road impact them under the old regulations so they finally figured out where they could build one. Now under this new plan they would have four roads affecting their property. He reviewed it briefly with a professional land planner who basically told him that with those four county roads they probably did not have a spot on the place where they could build a house that would have any view of the Cimarrons or the San Juans without putting it underground. From trying to comply from four different county roads is essentially totally impossible. When they say that it doesn't affect the value of your land, it does affect the value of the property. What has been in place has been working and he saw no reason whatsoever to do this. It's about the loss of freedom. We just continue to lose more and more and more. It's being taken away from us bit by bit and that's what's happening here. He could not see why his land now all of a sudden cannot be used, can't build a home on it. He highly encouraged the Planning Commission to put this thing aside and do the tweaks that need to be done as some of the professionals have talked about. But he saw no use whatsoever for these new regulations. Beauty is in the eyes of the beholder. We can't agree who a beautiful woman is and now you are telling us that beauty is brown and gray and dark, and it's not white, it's not red, it's not what the history of our country was that we saw when we came here. He thought that it was very beautiful. He hoped that the Planning Commission would take that into consideration and turn these things down.

Howard Greene, Ralph's neighbor, focused on blending. He lives in a valley that people travel through on their way to Owl Creek Pass northeast of Ridgway. Some say it is the best preserved scenic valley in the county mainly because major landowners have so far chosen to not develop it as Andy pointed out. Unfortunately, that will change and development will proceed as Andy also made clear. A couple of years ago a new property owner built a large, white, almost glaring industrial looking structure on the road to this valley, on CR 12, that distracted and disturbed passersby and neighbors. The property owners across the road had just invested in the property and were very upset. They and others complained to the county and appealed for help. Fortunately, the owner of the structure decided to change the color of his building to a pleasant one that blended with the surroundings even though there was no regulation requiring him to do so. The neighbors were all grateful and were lucky that time. Someone else might have become defensive or angry and refused to do this. The owner's property rights and the unclear regulation at the time certainly gave him the option to ignore these appeals. There will come a day when more and more people in this valley will decide to ignore the concerns of neighbors. He did not want this to happen. He did not want to depend on whether new neighbors

are considerate. He wants a predictable blending regulation. The proposed revision addresses this problem because it clarifies and characterizes the blending of colors with new structures and defines architectural options. Why not do this? Why allow our county to be potentially sacrificed because of the lack of improved blending protections. The existing code obviously has not addressed this problem. Adopting the new blending recommendations is not a burden and offers great benefits compared to the existing regulations. These blending improvements go a long way towards protecting both views and values. He would like to see this part of the revision to apply countywide.

Ann Devine lives in Pleasant Valley in one of those visual impact corridors. Her husband built their house and did not have any trouble meeting the requirements. She thanked the Planning Commission for all of their hard effort and dedication to come up with this proposal tonight. There are people in the room tonight who support the visual impact proposal and people who do not, clearly. We all have their individual ideas on how this issue should be handled and if the proposal was able to fit in precisely with what we all think and believe as individuals, it would be a perfect proposal. Unfortunately, that is not possible and that is why finding common ground is necessary in order to find solutions. She believed that the common ground comes from a shared love of the community and the beauty that we experience just by living here everyday. She doubted that there was a person in the room who did not value that. There had been a number of years of very slow growth in Ouray County. It is important to recognize, however, that future development will come and it will affect the community in many ways. In looking at other places in Colorado, we can see many examples of how the natural beauty that we all value can be impacted in a very negative way when development is not properly managed. She clarified that she was not talking about stopping development but rather managing how it happens and what the impacts are. She worries about the price of doing nothing more than what we have already done, the price of waiting for that perfect solution. The longer we wait, the longer we resist expanding our corridors in Ouray County that are subject to visual impact, the greater the risk in terms of development that will negatively impact those things about this community that we all value today. The time to protect our visual environment is in advance of development, not in the middle of it, and certainly not once it is in full swing, because then we have lost the opportunity. The price of doing nothing is a very high price to pay and one that no amount of money can ever undo as the future unfolds. She hoped that this proposal tonight would be presented to the Commission. She definitely supported it. One thing that had been said tonight a couple of times was that this is a solution in search of a problem. She clarified that in her mind this is a solution in anticipation of a problem and she considered that a huge difference. That is planning, and that's what most of us want to do in our lives, planning versus reacting. She appreciated the Planning Commission was not waiting but was trying to anticipate this problem.

Kent Parkinson, owner of Old West Builders and has been building in the county for forty-two years. When you suggest that it doesn't cost any more to add to the corridors and for the cost of building he had two good examples of what it has cost his customers over the years. One, they had to lower the house because of Highway 550 because the background was Dallas Divide. That cost that home dropping that entire lot three feet and then they had to make each story eight feet tall instead of nine or ten like the owners wanted, and they had to drop the pitch of the roof. When you drop the pitch of the roof in this county sometimes you drop it more than is safe because of the snow loads. The second example is a house that he built in Pleasant Valley in 2007. They couldn't see the story poles from CR 24. So they put a fellow in one of the tower cranes, ran him up in the air, and you could just see about a foot of his yellow rain jacket. That cost that house $30,000. The rules right now are as stringent as they should be. And with the blending, a lot of people complained about that. And the next thing you are going to tell us is we can only have 16-ounce Cokes in this county.

Jon Esty lives in Pleasant Valley. He and his wife moved from Denver five years ago because they were attracted to the scenic beauty of Ouray County. They were also very aware when they purchased their home that the County had rules and regulations that were designed to protect the scenic views. They recognized that the ongoing protection of the county's views added to the economic value of their home. They were impressed that residents thought enough about the grandeur of the county to put in place visual impact regulations to help guarantee that the beauty would carry on into the future. It made a big impression on them... that so many people cared about what this county looked like. He thought that most people in the room would agree that we live in a beautiful environment and would like to keep it that way. What we seem to disagree about is how to define and measure what we are looking at. We all have a subjective idea of what beautiful scenery is but when comes to an objective measure we have differing opinions because all of us are individuals with different experiences and perceptions. That is why it isn't surprising to him that the Planning Commission has taken so

long with so many meetings and community input to come up with objective measures that can be applied to the building structures in the county. County Staff, who must review the building plans, have indicated that they understand the revised regulations. In the event that more Staff time is required, as some people have possibly pointed out, to these building permits, then those submitting those permits should pay for them. Development should pay its own way and not be dependent on county taxpayers to find those costs. The proposed visual impact regulations, in his opinion, appear to be reasonable and will continue to preserve our scenic assets. He supported the regulations and recommended that they be passed on to the BOCC for their review and eventual approval.

Kathy McElman first purchased her property in the 1970s. It's a hundred and twenty year old house and has been full of surprises. She has been through and has been blessed to have many pieces of property in Ouray County but she has also been through no building inspectors, electric inspections, no visual impact, and building requirements that were less than satisfactory. She was glad that we have evolved and she supported visual impact regulations. But she also supported experts in the county who look at those visual impact regulations and have come up with suggestions on how to improve them. She believed that the proposed regulations went far and above what was necessary in Ouray County right now. One of the other highlights that had taken place that the Planning Commission did was they removed the words *"...and protect and preserve property values in Ouray County"*. She always thought, back in the day, that she had a partner in Ouray County – in the Ouray County Commissioners, the Staff, the Planning Commission – that would help her protect her property values in Ouray County. Come to find out the Planning Commission removed those words from the purpose of Section 9 of the visual impact regulations. Property values had been removed from that general purpose. She was around when the Master Plan was developed, when the visual impact regulations were developed, and property values was an important aspect of the purpose of visual impact. Property values will be significantly impacted with this change. Period. End. Zero. You may be a non-conforming but your neighbor might not be. Your house is also going to be devalued even though you are conforming and your neighbor is non-conforming because house values are based on comps. So please, listen. Write letters. Pay attention. Don't let your county be devalued. We have already suffered significant property devaluations. Maybe we were overpriced, maybe not. Remember, tourism alone is not the only industry in this county and we must protect and preserve, and further mining and ranching to continue to maintain our beautiful vistas in this county. Please pay attention. Please write letters to your County Commissioners. Please encourage the Planning Commission not to propose and further this change to the visual impact regulations.

Patsy Miller stated that it was her understanding that the Planning Commission was directed by the BOCC to increase the objectivity of the visual impact regulations contained in Section 9. Within the scientific community, a standard method of increasing objectivity is by quantifying the data gathered to study a problem. As the Planning Commission began its process of updating Section 9 they gathered data describing the attributes of the county roads currently designated as visual impact corridors. To reduce the subjectivity of these attributes, a sliding scale of numeric value was assigned to the attributes using a point system. In this point system, the lower number of points accumulated by a road indicted the greater potential for development along the road, better views from the road, greater use of the road by the public, and additional access to public lands along the road. Using this point system, the nine county roads currently listed as visual impact corridors have a total number of points ranging from 3 to 6. The Planning Commission then rated all of the other numeric numbered county roads using the same set of criteria. The roads that are proposed to be included in the revised Section 9 have a total point value ranging from 3 to 6, the same number of points as the current visual impact corridor. The number of county roads that will not be included as visual impact corridor have total point values ranging from 7 to 16. As directed by the BOCC, the Planning Commissioners proposed revisions to Section 9 are designed to reduce the subjectivity of the visual impact regulations through the use of quantifiable, objective data on attributes of the numbered county roads and by the continued use of an expanded numeric point system that assigns impact points to the size and height of a structure which are then offset by an increased number of mitigation points. The use of the proposed evaluation criteria in revised Section 9 would ensure that future development does not compete with the existing physical environment for the viewer's attention. The Planning Commission should be congratulated for implementing the directive of the BOCC, by quantifying the visual impact regulations and proposed revision of Section 9 and, thus, making the Code more objective. The proposed changes to Section 9 will facilitate builders and prospective homeowners in constructing dwellings based on a uniform set of clearly defined visual impact regulations.

Randall Gardner has been a builder for 42 years and an architect for the last 15. He has been living in this county for about 24 years. He remembered when he first came to the building department it took one page of paper to file a permit. Now it's up to 32. A lot of regulations, a lot of changes. We've all worked with this and gone along with most of this stuff. What you guys are proposing is way out of hand. Too many roads. You've got nothing left in the county, basically, to build in that's not going to be affected by this. If you are going to affect everybody who is going to be building new like this, you better just go ahead and take away the grandfathering thing and make all of the houses in the county conform so that everybody has to pay the same amount of money. It's not just up to the new people that are moving here or people that might prospectively buy here to pay for all of your fun. You guys move here and you think that you can shut the door and say nobody else can come in here except for under my rules. That's not fair. That's not fair to our children that are trying to maintain and stay in the county. They can't afford to stay here. You say that it's not going to cost any more money. He had two projects coming up in the next year. He went through them with the owners. This is an addition of $40,000 to $45,000 to each one of these projects. Not really fair that they're paying for all you guys. And, if you guys all want to come in here and just pony up and change your houses, paint your houses, add more screening, that's fine. Go for it. But you can't expect them to do all of the work for you.

John Hollrah lives west of Ridgway and supports the proposed Section 9. He thanked the Planning Commission for all of its hard work. He realized that many compromises were made along the way and even still there's a lot of opposition to this reasonable proposal. Agricultural buildings, mining buildings are exempted. You can have your red barns. The mining industry will not be destroyed. And data shows that property values increase in visual impact corridor. Some of the opposition is just simply based against all regulations in general. It's fundamentally based on self interest that says, *"I want to do whatever I want and I don't want anyone telling me what I can and can't do."* While there is some element of this in all of us, counties that have allowed this mentality to reign as policy can be seen across the American West, and as near as Montrose County and the area west of Pagosa Springs. It's not a pretty picture and he assumed that was one of the reasons why bipartisan Boards of the County Commissioners asked the Planning Commission to take on this task. Land Use Codes, and thus visual impact regulations, should be written and amended with an eye towards the question, "*What if?*" What if someone was to move to the county and did "*x*" or "*y*", where most of the people would regard "*x*" and "*y*" as a bad thing. Land Use Codes and their amendments need to be written, not for the short term, but for ten, twenty years and longer. The county may not change much or look differently if just a few things happen. But, what if over a period of time a lot of those things happen. What would the place look like then? This is part of what you have been asking over the past few years. Ouray County is still one of the few rescuable places left. A good Master Plan and a good Land Use Code provisions can keep it rescuable. Protecting the skyline, setbacks along roads, blending, adding more roads to Section 9, and other recommendations in your document make sense and allow Ouray County to be the kind of place that people who live here want it to be. Thank you again for your good work.

Todd Grey, Manager of HM Ranch, LLC, asked Andy Mueller to speak for him. Mueller explained that HM Ranch, LLC is the owner of 2,500 acres on Log Hill, essentially the three miles of the west rim of the Ridgway Reservoir and north of the existing subdivisions that you can see from the reservoir, itself. It spans across and CR 1A goes through the property. It is completely undeveloped, marginal agricultural land. HM Ranch bought this property years ago and has operated it as an agricultural property. They are very concerned about the process and would make the request of the Planning Commission and the County Commissioners to halt this process. This process has been pursued by this Planning Commission for over three-and-a-half years. Most of the discussions by the Planning Commission have been held in workshops that have not been noticed for action items on any agenda. Those workshops, while they were recorded or started to be recorded about three-quarters of the way through the process with the Planning Commission, they never had minutes taken at those meetings and according to the report that Commissioner Lipton submitted to the Board of County Commissioners over a year ago, there were multiple times where decisions were made by this body at those workshops in violation of the Colorado Open Meetings Act. We believe that this hearing has a predetermined outcome that the Planning Commission members have expressed on the tapes of those workshops and, frankly, in the press and in other public forums both written and verbally, whereby there has been a decision made by this Planning Commission before any public input was made tonight. They believed that was in violation of the Colorado Open Meetings Act. They asked the County to consider redoing this process, with all due respect, to comply with the Code. And the reason they would ask that is that they don't want the County to end up in litigation that would be expensive for it and for the other litigants under the Colorado Open Meetings Law.

Should those litigants opposed prevail the County will have to pay their attorneys' fees, as well. They also think that the impact on the County should this regulation go through, regardless of whether there's litigation, will be a huge financial burden on the County government and on the Land Use Staff. For those reasons they asked that this process be stopped and repairs be made to the process.

Nick Williams stated for the record that he is a ground squirrel. To him, the essence of the VIR controversy is threefold. First, property owner rights. Should local government interfere with property owner decisions? If your answer is no, I wonder what you thought of the Family Dollar. If we lack adequate controls and a forward thinking policy vision, Ouray County will become the Front Range of the Western Slope. Second, unnecessary burden. Do the proposed VIR changes put an unnecessary burden on building? They do to a degree, but they are fine-tuned changes. The county has grown with these changes and we're modifying it. Everyone has conceded, or most people have said, that they've worked. These are fine tunings. They are not radical changes. If we don't have future consideration for these changes, then you can expect many more obnoxious eyesores without modification of VIR. The third and most compelling question is, will these VIR changes hurt our local economy and lower property values and prevent us from growing as some have claimed? This is panic peddling here. To answer that look at one simple fact: per the U.S. Census over the last two decades the population of Ouray County has not shrunk. It has grown. In fact, Colorado has grown. In 1990, there were 1,447 people living in the county; in 2000, there were 3,742 people; and in 2009, there were 4,602 people. That's a 63% growth in our county in twenty years. Times are changing. This isn't the Old West; it's a new West and it's a changing West. With an increasingly robust economy, it's certain that our population will continue to grow and he guaranteed that it would grow on those corridors not currently in the VIR. People will move here for the same reason most of us did. We love our mountains. We love our valleys. Failing to act positively on visual impact we will compromise our world charm and scenic grandeur to become yet another depressingly, urbanized, commercialized, and ugly mountain town. Or as the singer chanted, "*They paved paradise and put up a parking lot.*" Lacking VIRs you can be assured that the parking lot will become an unsightly building, obscuring or detracting from the views. Once again, this isn't the Old West, this is the changing West.

Michael Hockersmith is an attorney with the Tisdel Law Firm appearing tonight on his own behalf, not representing any particular client. He has lived in Ouray County since 1983. He raised two girls who graduated from Ouray High School. His firm was involved in the initial drafting of both the original Ouray County visual impact regulations and the 1997 revisions. Most people in the room are saying there should be some visual impact regulations, that everyone wants to protect the scenic beauty and the rural character of our county. But, at the same time, in the last thirty years he has seen this county become more and more elitist in the type of individual who can afford to live and work here. This proposed regulation would foster and encourage the continuation of this lack of diversity among our citizenry, rendering the ability to live and work in Ouray County beyond the economic reach of many working people and their families. The current regulatory scheme has worked well without the imposition of costly regulatory hurdles imposed upon landowners who wish to build upon or otherwise develop their property. Without a doubt, this regulation as proposed would increase the cost for the average landowner of building, remodeling, renovating or reconstructing a structure in Ouray County. Without a doubt, this proposed regulation would mandate the need for increased taxpayer dollars or fees used by the County to both implement and enforce it through the need for increased staff and expert review. We don't know what those costs are, both to the landowner and to the county, because his understanding is that this body, for whatever reason, has been unwilling to even consider such an issue in its drafting of this proposed regulation. In his opinion, this approach is irresponsible, especially when you recommend potentially a huge change in the regulatory framework. In the interest of keeping Ouray County a place where families and working people live and enjoy its beauty, he urged the Planning Commission to recommend to the Board of County Commissioners that it not adopt this regulation as proposed in this draft. For this public hearing to have any meaning beyond just meeting some sort of technical, legal requirement, you should not be voting tonight, you should not be voting immediately after the next continued public hearing. You should, in respect for the opinions that have been given to you both pro and con, both constructive and not constructive, you need to allow yourself an opportunity to digest and assimilate that which you've heard tonight before any formal recommendation is voted on.

10:07 Lipton continued the public hearing to 6 p.m. on March 21, 2013.

Respectfully submitted by:

Linda Munson-Haley

Approved by:

Sheelagh Williams
Vice-Chairman

Minutes
Ouray County Planning Commission
March 21, 2013 6:00-10:00 p.m. (appx)
Ouray County 4-H Event Center
22739 Highway 550, Ridgway, Colorado

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

In Attendance:

Planning Commission Members: Ken Lipton, Tim Currin, Karen Risch, Randy Parker, and Sheelagh Williams
Planning Commission Alternates: Dudley Case and John Baskfield
Staff: Mark Castrodale, Bryan Sampson and Marti Whitmore

Absent:

I. Call to Order – Regular Meeting of the Ouray County Planning Commission:

Planning Commission Chair Lipton called the meeting to order at 6:02 p.m.

1. Continuation of Public Hearing – Possible Amendments to Section 9 "Visual Impact Regulations" of the Ouray County Land Use Code:

Lipton introduced the topic and gave a brief description of how the remainder of the public hearing would be conducted. He noted the decreased attendance from the February 26 meeting and was concerned because this hearing began an hour earlier than the previous hearing. Because of that he said that public comment would be left open until 7:00 p.m., and if the remaining speakers had not shown up by then he would close the public comment portion of the hearing. He called the names of the ten speakers on the list. The time limit for each speaker was three minutes. He explained the procedure of the hearing. After closing public comment he would read the set of questions that were developed from the questions that the speakers had asked during their testimony on February 26. To avoid taking up the time allotted for each speaker, the Planning Commission had advised that they would make note of the questions and address them after all of the public comments were made. The Planning Commission will then go into deliberations where they will discuss the public comments and each Commissioner will provide his or her reaction to the comments. After that, the Chair will look forward to a motion to move this forward to the Board of County Commissioners with a recommendation to either approve or deny the Planning Commission's changes to Section 9. If the motion is seconded, there will be discussion and amendments, most likely based on public comments. Each amendment will be voted up or down. Those that are approved will be forwarded to the Board of County Commissioners.

Public Comment (continued from February 26, 2013):

Mike Budai and his wife have lived at 13521 County Road 1 for the past thirteen years. Their home burned on Christmas Day 2009. Their hopes for these proceedings were that the revisions would bring objectivity to the process so that future residents would not be subjected to the abuses that they experienced. Relying on subjective criteria such as perceived building mass, blending and screening, leaves the door open for abuse by unscrupulous builders, developers, individual homeowners, building inspectors and other public officials involved in the process. As an example, the previous County Building Inspector had a reputation for being honest and fair-minded, which he probably was for the most part. Yet, he allowed a house to be built at the corner of County Road 1 and Ponderosa Drive that clearly violates the visual impacts criteria. The violation is minor but at the same time, under pressure from a corrupt County Attorney, he attempted to keep us from rebuilding our burned out home for an even more minor violation. How could he do this given the visual impact regulations? He could do it because key components of the regulations are subjective. He was allowed to use Kentucky windage instead of accurate measurement tools and Photoshop to make reality look worse than it is. The revised VIR addresses none of these issues and adds newer tools for the unscrupulous in the form of perceived building mass, blending and screening. Mr. Castrodale's comments notwithstanding, none of these

can be objectively measured. The existing skyline breakage exception rules in Section 9.3.D. are extremely troublesome because no measurement is specified. If one asked every member of the Land Use Department, which I did, how these measurements are taken, the most prevalent answer is, "*I don't know.*" The proposed rules do not address this issue. Section 9.3.D. does add clear, additional exceptions at parts A and B but then goes off the deep end in part C. It is incomprehensible and therefore completely subjective. Revised Section 9.3.F. is another example of how to muddy the water. Previously clear, straightforward wording was changed so that the section is now totally subjective. He was pleased to see that the onerous regulation discriminating against victims of fire and natural disaster was eliminated. The exceptions for reconstruction are well written and harm no one. Why, however, is this a one-time exception? Is it not possible that a house is severely damaged by wind and hail, rebuilt, and then destroyed by fire? What recourse does the victim have? I thank you for your efforts, but unfortunately more work is required if you want to refer to these revisions as improvements.

Craig Fetterolf was not present.

Richard Wojciechowski was not present but the Chair was advised that he would be here shortly.

Carla Choate was born and raised in Boulder County. She couldn't believe how radical the changes were in the time that she was there from 1964 until now. It was unbelievable. It was nothing but radical changes. They made it extremely hard for people to reside there and made it unwelcome for businesses and residents. It's also really de-valued the property prices and the lifetime investments that people had made. That's what she saw happening in this county. She saw abuse of authority. She has a feeling that regardless of how many people were in opposition, you are going to shove this through. We have investments in this county that they worked their whole lives for and she saw severe diminishment of those investments like what has happened with her parents in Longmont in Boulder County. What has it cost us to this date to present, this far, all that you have presented to us and how many people will you have to hire to impose all of these regulations?

Bill Stimatze bought his lot in 1982 and has owned about four or five different lots on Log Hill. The proposal that you are making is going to make it impossible for me to build. He would like to know what qualifications the Planning Commission has. If he has problems adding onto his building he will sue Ouray County.

Linda Ingo submitted her comments in writing but wanted to go on record as being opposed to the recommendations.

Eric Lederer was not present.

Robert Frost was not present.

Rick Discoe lives on CR 10A and feels something this sweeping really needs to be supported by a vast majority, 75%, 80% or 85% of the county. At the last public meeting for this a month ago he looked at the "*fors*" and "*againsts*" and there was a majority against. The same with tonight. We have been here before. We have debated the visual impact in the '90s. The crowds were large, it was well attended, and the debate was emotional and strong. The result in the '90s was to protect the scenic byway corridors while respecting private property rights and avoiding creating a countywide HOA. These proposed regulations and this process definitely creates a countywide HOA. It reminds me of the movie "*The Stepford Wives*" where everything is going to look the same. It is not what he is in favor of. It was a good result from the '90s. What we have now are maybe two or three examples that fell through the cracks that created a problem and, therefore, the document probably, smartly so, should be tweaked and adjusted by the professionals, by the experts, not something that is this thick of regulations. He has sat on several County volunteer boards over multiple years and he has chaired several of them, and feels that this Planning Commission has made two huge mistakes that have resulted in two years or more of some serious work, in his opinion, of a wasted effort. Those two huge mistakes: 1) you should always listen to the majority, and 2) you should listen to the experts. Doug Macfarlane is one of the most fair people in this county that I have known. He knows this process. So does Larry Coulter and John Peters. They could have tweaked it correctly. I feel that this entire document does not need to be adjusted, it needs to be shredded, and let the professionals get back into it and take maybe two or three, two-hour or three-hour sessions and they would have fixed everything that we needed fixing in it.

Jack Flowers is opposed to this. Mostly, he his opposed to adding more visual impact corridors. He knows that the draft won't be shredded so we need to make it work. He thanked the Planning Commission for their hard work. He wonders if we're going to get everything to fit a certain mold… he likes blue Dodge pick-ups, so he wondered if we should say that anybody who owns a vehicle in Ouray County that has four wheels on it should have a blue Dodge pickup. We can't have something different. Driving around and looking at the current visual impact corridors and where the proposed visual impact corridors could be, he had a hard time seeing a huge difference in the houses that are there and the ones that are in the two corridors. He can't see what we're gaining by adding all of this to it. He has been to several of the Planning Commission meetings and, after attending them, he was starting to understand what the Code says. But, making five pages turn into twelve pages isn't making it simpler for the average person on the street. When he came to the first couple of meetings it all went over his head. He couldn't figure it out. As he got acquainted with it, then it made more sense. He didn't believe that we had simplified this thing at all. He had three questions that he wanted answered. The second slide of Lipton's presentation said that they wanted to take the wording out that the Planning Commission and the Board of County Commissioners would not be responsible for land values in the visual impact corridor. He did not know why you would take that out if, indeed, more visual impact corridors made the property worth more. He did not believe that it did. He believed that was the reason why it was taken out. If it's left in there why would you want to take it out? If I owned a piece of property and I could do something yesterday that I won't be able to do tomorrow, have my private property rights been taken away from me? The County should be responsible to notify the people who would be in the proposed visual impact corridor that they have a non-conforming structure. He did not think that people realized what was coming down the road.

Charles Mueller was not present.

Richard Weber is a fourth generation rancher in Ouray County. A few years ago he bought a piece of property that has been passed down by generations. In the future when he has kids, he would like to be able to pass it down again knowing that they had a right to build on it without jumping through a lot of hoops and dealing with problems they don't need. When he hears one of his friends say that they landed a job at one of the current operating mines he considered that a success. In an economy like this, anytime we can create jobs, he did not understand why we are trying to make it harder for the mines to build and operate. As a rancher, he likes simple; this is not simple, and the average person cannot comprehend it. Not to mention how much time and money, tens of thousands of dollars, our county tax dollars, have been spent on attorneys and Staff with meetings and writing draft, after draft, after draft, after draft of a proposed change to Section 9 that obviously our county is not 100% in favor of. You do not have a majority of taxpayers in favor of this change. In today's economy, with budget cuts every year in every department, where are we going to find the money to fund the manpower it is going to take to enforce these regulations? Please reconsider the revisions to Section 9.

Craig Fetterolf was still not present.

Richard Wojiechowski pointed out that some of the flaws in the proposal had been pointed out by previous speakers, and they are very real. However, he wanted to address a larger issue. Public service. True public service is a noble thing. But true public service means that Commissioners such as you are charged with representing not their personal views, not those of their friends, but representing the entire population. That includes not only refugees from bankrupt societies; it includes ranchers, ranch hands and their families, miners and their families, and the various trades that support them. Not only citizen residents but also absentee landowners who may hope to someday build on their land. Not only citizens, but also legally resident aliens. Not only owners but also renters. Families who have lived here for generations and hope that their children can afford to live here. Those who choose to live freedom in the unincorporated parts of the county. And even those who have to work for a living and do not have the time to attend hundreds and hundreds of meetings. This proposal, the one that has emerged after four years of tedious effort, represents the views of two subgroups: residents of the city and town who are not affected by the proposed regulations, who do not have to comply with them but who would subjugate the unincorporated county lands, and elitist immigrants, primarily new refugees from places like L.A., Philly, as well as Boulder and Denver, who want to turn the county into one large PUD or homeowners association with the restrictions that they favor. This proposal pays only lip service to the needs, desires, investments and rights of those who do not care to live in a PUD nor in the city or town. Those who plainly bend over backwards to compromise should consider an analogy: you are like a sheriff who arrests an innocent civilian and then says instead of putting him in solitary confinement he will compromise by

allowing him one hour a day of exercise. Big deal. For those that want to live in a PUD, such are available, both here and elsewhere, but neither they nor you have the right to turn the entire county into one PUD. If you set aside your own preferences and contemplate what this proposal represents, I submit you will recognize that it represents the narrow desires of only a small, albeit wealthy, vocal and largely retired and nonworking portion of the population. As Commissioners, you are required to represent not your personal views, not those of a political clique, not those of your friends, but to represent the needs and rights of the entire population. On honest reflection, you can only vote to not send this proposal to the BOCC.

Eric Lederer was still not present.

Robert Frost was still not present.

Craig Fetterolf was still not present.

Lipton noted that there were only three people who were on the list who had not spoken. He would keep the public comment portion open in case they showed up prior to 7:00 p.m.

Lipton read into the record the list of the written comments that had been submitted since the last hearing that included Ann Devine, Beverly and Jorg Angehrn, Mary Beth Hollenbeck, Keith Meinert, Dottie Miller, John Hollrah, Anthony Gegauff, Terry Thompson, Deanne and Donald Graham, Sue Husch, Dave Hamilton, Nick and Joanne Williams, Faye and Ronald Hinkson, a letter from ROCC written by Roze Evans, Les and Susan Watson, John and Sandi Ivory, David Svenson, Carl and Mary Cockle, Annette and Gig Henry, John Mitchell, Ralph Walchle, Kathryn Urso, Steve Walker, Mary Ann Jackson, Bud Zanett, Gale Slemmer, John Meltzer, Donna Whiskeman, John Nelson, Gary Bennett, Patsy Miller, Gary Paul Johnston, Liz Ahearn, R.T. Wojciechowski , Susan Wing, Alan and MaryJane Abrahamson, Michael Cassidy, Nancy Sanders, Rein van West, Barbara Seeley, Barbara Steele, Bob and Helen Olivier, Sarah Coulter, Judith Chamberlin, Fred Jossi, Steve and Claudia Wolff, Gail Jossi and Family, Roger Pinyan, Eric Lederer, Jim Stephenson, Rebecca James and Richard Harbin, Rick Skoumal, Terry and Sabrina Butler, Jane Nash, John and Lana Cotner, Carla Choate, Bumper and Christen Williams, Bob Thomas on behalf of Chimney Peak/Telluray/Sleeping Indian/Double RL and Wolf Land Company and J Bar M, John Peters, David A. Calhoun, Ed and Linda Ingo and John W. Nelson.

Lipton introduced the questions from the public.

Lezah Saunders asked, if the Planning Commission may seek qualified outside professional assistance to review the applicant's proposal, Section 9.5.B., how does the county expect any individual to comply with regulations if the committee that wrote them did not understand them?

Williams: There are actually no changes in this section from the current Code except that the Planning Commission added a little section about individual ones. The previous to that section was all about PUDs. She had asked Staff about this section and the provision, and it had not been used during their tenure but she thought that it should be retained. For example, a consultant might be appropriate for a PUD where there were multiple homesites and it had complicated topology, not for individuals but for PUDs. She thought that they could clarify that the consultant provision only applies to PUDs by changing the first sentence of 9.5.B. to read, "*The Planning Commission may, with prior approval of the Board of County Commissioners, seek qualified outside professional assistance during its PUD review process.*" She would consider that as an amendment.

Lipton: Generally in the past, this part of the Code has been used in peculiar situations, usually in a PUD but it could happen in individual situations, where there is special engineering and topographical studies may be needed. It does not imply that the Planning Commission nor the building Staff doesn't understand the Code, but allows for rules for if a special consultant is needed to handle a specially, technical problem that pertains only to that particular case.

Craig Jackman asked, are structures for agriculture excluded, and is primarily use, referring to the use of agricultural structures, too high a bar.

Williams: As far as she understood it agricultural structures are absolutely excluded. She asked Staff if they were aware of any Section 9 action taken with regard to any agricultural or mining structure, and they were not. The current practice with the current Code is that ag and mining structures are exempt. Staff did not get into nitpicking about exclusive versus primary usage. Fences are structures, so ag fences would also be exempt. There is no language that would imply that the Planning Commission would change that.

Lipton: In the primarily use that Mr. Jackman is referring to, the language is exclusively used. That applies to new structures. If there is an existing structure on an agricultural property nobody is going to look inside and see what's in there. It was built for an agricultural purpose and that's what's presumed. It's basically for new structures and he did not think it's too high of a bar because there were exemptions for these structures.

Ethan Funk asked if utilities were excluded. If not, why are they not?

Lipton: We think he was referring to utility boxes. Lipton did not believe that the County had any jurisdiction over those things like transformers on telephone poles, etc. It was a good question and the Commissioners would look into it further. We do not have a definitive answer right now.

Williams: We did get a memo from Alan Staehle, "*Public Safety Exemption from Visual Impact Regulations*". She brought it back into the Planning Commission last month in February and at that time they talked about it and her recollection is that Staff said that the BOCC was working on an entirely new section having to do with utilities and all of that kind of stuff and this more properly belonged there rather than in visual impact.

Steve Martinez asked how long each Planning Commission member had served on the PC and could he trust them?

Parker: I would like to lump this with the next question from Roger Pinyan who asked which of the PC members are ROCC members, and what is the influence of ROCC on your decision. He responded to both. Their questions, in my opinion, essentially raise concerns about how I got appointed, and the other members of the Planning Commission got appointed. Can I be fair and objective? These questions are about process, not be about who I am, how long I've lived in Ouray County, or what groups I support. If these questions are truly about who I am, how long I've lived in Ouray County or what particular groups I support they are, in my opinion, about trying to create a division to be divisive in our community by attacking how long someone has lived in the county and whether they support liberal or conservative positions. This type of an inquiry is neither fair nor appropriate as part of a public hearing process. I am a resident and a taxpayer of Ouray County. I have a longstanding interest in zoning issues. I applied to and was appointed by a bipartisan BOCC to the Planning Commission in March 2012. As part of that process I was interviewed by all three members of the BOCC at a public meeting. My written application is a matter of public record. At the time of my appointment, I assured the BOCC that I could be fair and objective and would not prejudge matters that came before the Planning Commission. I have worked hard to be fair and try to address all of the concerns raised by the public and other members of the Planning Commission. Like all of my fellow Planning Commissioners I signed a Code of Ethics, which is also a matter of public record. I thank the BOCC for giving me this opportunity to serve.

Risch: I would like to answer this question from Steve Martinez as well as other questions that have been asked this evening. Thank you to everyone who has attended these two hearings, written letters, and come to our numerous workshops. I am a three-year member of this Planning Commission. As Randy stated, we were all interviewed, our applications are a matter of public record and I, too, am proud to have served on this Commission. I live and work in the city of Ouray and I know Ouray County's mountain areas and roads pretty well. My husband and I have owned houses in the city since 1968. I realize that I don't live in the county but that is an interesting matter. I do live in the county as well as the city, as do residents of Ridgway and residents of unincorporated places like Colona or Log Hill. We all pay taxes, we're all residents and we're all accepted equally to serve. I am proud of that. I have also been on other planning commissions so I feel I bring some experience to this. These proposals are a compromise. I feel they are in the spirit of the mandate that the Board of County Commissioners gave us a couple of years ago. In it, they asked us to be as thorough as possible in examining some of the issues that had arisen over land use, particularly relating to Section 9. I believe that we have done so. We don't all agree on everything that's been proposed but we have compromised. It has been said that all of this beautiful county deserves

protection. The proposal before you protects more of the county's alpine travel corridors than before. This is important to the economy of the city of Ouray, the town of Ridgway and the county. The two municipalities produce nearly $1 million annually in sales tax revenue for this county. That's approximately one-eighth of the County's budget. The many tourists who visit Ouray County's alpine areas each year pay the bulk of these taxes. This proposed Section 9 road expansion addresses the long-term need to preserve both the alpine areas and these revenues while allowing residential development, mining and ranching to proceed in a good fashion.

Currin: I have been a member of the Planning Commission for two years. I am not a member of ROCC, and I have some skepticism on some of their positions.

Case: I have been on the Planning Commission approximately eleven months. I am the newest member and the First Alternate member. I have been an attorney for thirty-five years. I've been on other planning commissions. I have put my emphasis on representing the entire county, not any one group. I'm a member on four boards in the county and also the Road and Bridge committee. But I put the welfare of the entire community ahead of any group I am in, period.

John Baskfield: I have been the Second Alternate on the Planning Commission for approximately two years.

Williams: I was appointed to the Planning Commission three years ago and before that I was involved and I went to many, many BOCC meetings and many Planning Commission meetings. During my lifetime I have been always very involved in civics. I've been on commissions and boards, etc. As to the question of whether I am trustworthy, I have worked all of my life. I have had sterling job performance reviews if that's any indication. My husband trusts me and we've been married for thirty-four years. I think I get some points for that. But what I can tell you for sure is that you can trust me to listen with an open mind to every comment, to read every letter with an open mind, and to respect everybody's opinion. You can trust me to consider all of the material that came to us and to look at it and analyze it (and I have some experience as an analyst), to follow the direction that the BOCC gave us in Resolution 2010-045, that's part of what we're supposed to do, and to render a decision that is based on the evidence before us. With regard to ROCC, I will tell you, yes, my husband and I have a family membership and every year ROCC has a spaghetti dinner where they honor members of the community like Roger and Angie Henn, and Alan Staehle, Peter Decker, Sue Hillhouse, and Donna Whiskeman. I officially make spaghetti sauce for that and sometimes a dessert, as well. I also participate in their annual parking lot sale where people bring in all of their used goods and instead of going in the dump someone else gets a treasure to take home. I think that's a community service. I have participated in their annual Highway 550 clean up, taking dead animals and trash off of our roads. And ROCC also, as part of their parking lot sale, did electronic recycling because it's dangerous to put electronic materials in the dump. I worked very hard on that. ROCC also does a lot for the community. They have annual donations to organizations like Ridgway Cares. I'm a member and I'm not embarrassed about that at all. I think we're a good community organization. The question about my involvement with ROCC came up during the appointments and I said that I would like to continue to be involved in the Public Lands aspect of ROCC and that I would cease any involvement in their Land Use activities, and I have honored that. Like Randy, I was appointed by a nonpartisan group. What's the influence of ROCC on my position? I listen to and study all of the public comments and I give equal weight to all comments. I listened to the public comment from February 26 again. I have read and reread all of the letters. That's part of what we're supposed to do as a member of the Planning Commission. I would say that letters that have specific comments are much more helpful than general ones either in support or in opposition, and those letters make a difference to me. I will be proposing some modifications based on the public input.

Lipton is in his third term on the Planning Commission, now seven going on eight years. Of those terms he had been elected Chair twice and Vice-Chair once, at times when there were not any ROCC members on the Planning Commission except for him. For the record, he had not been an active member of ROCC for over five years, not that he thought that mattered. As for whether he can be trusted, he thought that he had shown over the years that both the County Commissioners, and there had been three different Boards of County Commissioners than the Board that appointed him. Apparently, they trusted him enough to reappoint him. That was good enough for him and he hoped that it was good enough for Mr. Martinez.

Cathy McElman asked why protection of property values was removed from Section 9.1.

Parker: This was initially taken out by the BOCC and was in the draft that the Planning Commission received from the BOCC. He would be making a motion to add it back in.

Williams: She recalled that it was removed because the BOCC, the Administration, could not guarantee anything regarding property values. For example, property values have gone down in Ouray County in the past four years because there is a national recession. Is that the fault of the County? She believed that was why the BOCC took it out.

Tom Sylvester asked what the definition of an accessory structure was. Does it exclude all of the structures necessary to operate a mine including dwelling units for employees?

Williams: The definition of accessory uses and structures is in Section 22, not Section 9. It is a quite lengthy definition but it does include accessory dwelling units. And, the thing about where it's for employees, they don't have any area limitation, and they don't have any siting location. As to Sylvester's question, the Planning Commission did not make any changes to the definition in the Code. It is the same as it's always been. It does include employee housing.

Robin Gregory asked why there were not more property rights advocates on the Planning Commission.

Risch: I believe we are all property rights advocates, especially since we own property in the county.

Parker: The appointment to the Planning Commission is not in any way controlled by the Planning Commission. The BOCC makes appointments based upon the applications that are in front of them. I would encourage everybody to get involved. Apply. It's your right to speak and participate and I encourage you to do that.

Lipton: I think it's really unfair to assume that there are no property rights advocates on the Planning Commission. Property rights is a complicated issue and some people have different understandings of what property rights are. I'll have more to say on that later. As Randy said, everyone up here has been appointed in a competitive process. None of us were the sole applicants for these positions. The County Commissioners made these decisions based on these applications and interviews that took place in an open meeting. I think that the implication of that question is really unfair.

Phil and Terry Blackford asked, aren't there more compelling issues that need your attention.

Williams: The BOCC actually directs us as to what we do. We don't go off and make stuff up to do. They have been reviewing our priorities every six months and then there's a resolution that addresses what we're supposed to be working on. She read a list of resolutions adopted by the BOCC since 2007 and all of them include looking at revising Section 9 as a priority for the Planning Commission. They are Resolutions 2007-041, 2009-002, 2009-030, 2010-007, 2010-029, 2011-011, 2011-043, 2012-005, 2012-028. We are not going off into the weeds here. The BOCC is directing us in what to do. The County, at no cost to the county, had Dr. David Theobald from CSU do a build-out study for the County that looked at, under the current regulations, what was the population at the time it was done in 2007, and when all of the lots were built out what would be the population. She referred to maps from the study that showed the results. There is going to be tremendous growth and we don't know if it's going to be next week, or next year, or next decade, or next century, but it is coming and we're a Planning Commission and we're supposed to plan.

Parker: Just as an additional note to the various BOCC resolutions that Williams mentioned, that was over four different BOCCs. Three different members left the BOCC during that time and new members came on, but the resolutions were never changed. We were told to keep going and get it done.

Lipton: On the question of compelling issues, actually Section 9 has not been a compelling issue; it's been a top priority. The compelling issues are applications and parts of the Code that County Attorneys have decided were not proper. In this period of time, when we've had few land use applications, it has been a good time to review something this complicated. Over three years, no issue that was compelling was delayed in any way to address Section 9.

Janet Pritchett asked if the PC had reviewed the most problematic building permit requests and tested them against the proposed revisions. Was each evaluation reviewed against the same list of task

criteria? Has the PC considered the possibility of a lawsuit, the likelihood of winning the lawsuit, and the cost of a lawsuit?

Parker: I have probably attended a dozen or more public hearings in Ouray County. It seems to me that the axiom that no public hearing is complete without the threat of litigation is true. There's always somebody that's not happy and, as everybody knows, anybody can sue anybody over anything. The question is, is there a legitimate reasonable basis. We have been diligent in having our draft reviewed to make sure that it is defensible and we have been assured that it is defensible. Does that mean that somebody can't sue the County if they adopt this draft? No, it doesn't. In my opinion there will be people who are not happy no matter what is done. I'm not sure that the County or the Planning Commission should be making decisions over threats from attorneys or citizens. I think we have to do what we believe is right based upon the facts and the evidence that has been presented to us. I trust that every member of this Planning Commission will do what he or she believes is right and then forward it to the BOCC for them to make the decision. We are only a recommending body. But, one of the things that everyone should remember is that the BOCC does not get to act on Section 9 without a recommendation from the Planning Commission.

Lipton: It not only works that way, it is required by law.

Currin: I want to clarify that the County Attorney told us that the proposal was defensible but that defensible means not that the County would necessarily win the lawsuit. She wasn't sure they would win at all. Defensible meant that she could think of a brief that would respond to the lawsuit.

Lipton: The other thing to keep in mind, to add to that, is that this is only a recommending body. I think it would be a little difficult to file a lawsuit against a recommendation. It would be pretty hard to show that someone was damaged by a recommendation.

Williams: Going back to Janet's first question of whether we reviewed the most problematic building permit requests and tested them against the proposed revisions, I'm really glad she asked that question because we've been testing various scenarios for about two years and I might get the nickname Ms. Spreadsheet because Excel is a wonderful tool. What we did is that we tested ideas all along as we went along because it is a complicated point system. We did that very thoroughly. I was the keeper of the spreadsheet. Tim brought in a number of spreadsheets and we tested hypothetical houses big and small, close to the road, far from the road, screening and no screening, and then there was a question about the existing structures that had been built. Land Use Staff started keeping records about the structures that were going through Section 9 around 2009. That meant that for any structure that was in a visual impact corridor and visible from that corridor, which are the two requirements to go through the process, there is actually a visual impact worksheet that describes how many points they got for screening, for blending, how tall it was, how big it was. I went through the records from January 2009 through December 2012 and tested every structure. Every structure that passed under the old system passes under this system. So, it is absolutely not the case that it is more stringent. What I believe it does is that it focuses on the mitigation techniques that are, in fact, effective. There has been a lot of talk about how we ignored the builders. We absolutely did not ignore the builders. We got their report. I am going to go through their report and say that this is what they recommended and this is what we did.

Currin: I looked at the same data and came up with the opposite results. The point system as proposed is more onerous and it's just in the math. It's definitely more onerous.

Williams: Anybody can look at my spreadsheet.

Lipton interrupted to note that it was a little past seven o'clock and he wanted to check to see if there were any more speakers that had come in since. He called Eric Lederer, Robert Frost, Craig Fetterolf. If they are not here we have completed the list of speakers who had signed up at the last meeting and he officially closed the public comment portion of the public hearing.

Baskfield: I just wanted to say that we have gone through exhaustive data and I think I had a similar experience with how do we interpret data, what is the data telling us. My interpretation was that it was telling us something different than the majority of the Planning Commission. In some cases, data that was sometimes not even set up by the Planning Commission but may have been situated by the BOCC. For example, criteria as to how we make decisions as to which roads to add... we were measuring criteria to

indicate, for example, an economic result that, in my opinion, did not lead to that conclusion. For example, if a road has a certain number of trips or trailheads on it, it has economic importance. Yes, I agreed with that, but the conclusion that we were following was that if buildings are built along this road that a number of trips will decrease or the number of tourists will decrease. That was another example of something that I was not in agreement with.

Janet Pritchett asked if the PC had considered wind and solar farms throughout the county. Is documentation available? Have the changes been planned or are these the first thoughts on this issue?

Williams: I'm a volunteer. We did consider wind and solar farms and there's a new part of Section 9 that relates to that. Again, that's because the BOCC in their resolution to us specifically asked us to address that. I think that maybe it doesn't belong in the visual impacts. It may be that there should be another section that addresses alternative structures but the BOCC directed us to do that. Ken did a lot of work in researching that and he could talk about where they came from.

Lipton: I reviewed the alternative energy regulations in several counties around the state. Many counties did not have one yet. The one I focused on most was Aspen because they had just completed one and their Land Use office was very cooperative in providing a lot of information guides. In addition to that, we consulted the leading provider of alternate energy in the county. He attended several of our meetings and thoroughly reviewed what we put into Section 9. I think the County will probably write a larger section, but we addressed it as it relates to visual impact and we were assured by the experts and compared to other counties, we determined that the proposed regulation is adequate and not prohibitive, and would not discourage anyone from putting in solar panels or a wind turbine. At the same time, we put in some things that would mitigate visual impact, especially for wind turbines, and also on glare related to solar panels. The documentation that is available, our records, minutes of our meetings where we discussed this, will probably be the only documentation that will be available. And, the second part of that question, I'm not sure what that question means. As far as I know, yes, it's the first time the County has addressed alternate energy relative to visual impact.

Carl and Mary Cockle asked how many variances have there been over the last ten years.

Williams: Since 1997, about 16 years, there have been four variance requests. One was denied for health and safety reasons. It was up on 550 in an area where CDOT said they blew their cannons. And the other three were for skyline breakage. One was as recent as last month. All three were granted.

John Mitchell asked is the word "blend" defined in the definition section.

Lipton: Simply put, yes… fully.

John Mitchell asked if contrasting color trim blended.

Lipton: It is clearly written into the draft. Contrasting colors are not meant to blend. The only restriction we put on contrasting colors is that they do not dominate the entire structure. This was based on advice we got from architects and builders during the course of our deliberation when it became clear that part of the community felt strongly that we should allow contrasting colors and we did this for trim. There is no limit on what the colors are.

Williams: I do want to talk about the colors. They talk about low luster earthtone colors. If you're thinking brown and gray, that is not what it says because in the definition it says a color scheme that draws from a color palette of browns, tans, grays, greens, oranges, whites, blues, and some reds. I'm a pastel artist. This pretty much covers it because you can make purple from red and blue. Nobody is saying that you need to have a brown house.

John Mitchell asked how Marie Scott's old house fit the proposal. If it is ever determined to be a historical structure can it still be painted white with a red roof?

Lipton: The answer is yes. With advice from the historical society in Ouray we determined and it was recommended that when we were addressing historical structures, we put a finite date on what would be deemed historical. That date is 1920. I have some comments on that later on during our comment phase.

The answer is, yes it would. It is an existing structure and maintenance of existing structures is permitted. So, if they had to fix a red roof, they can. If they want to repaint the building, they can. It probably is a historic structure but, at any rate, it's an existing structure so it's grandfathered in. This was in direct response to public input that was received at public meetings held by the BOCC when there was some concern expressed that someone wanted to build a new house but wanted it to look like a mining structure and was in the mining area, or if they wanted it to look like an old ranch house and was in the ranching area in the Valley Zone, they might not be permitted, so we took heed to that and built in a historical structure exemption. It's very easy to comply with.

John Mitchell asked, how much money did that presentation on the web cost us taxpayers.

Lipton: Honestly, I think this is a very cynical question. The County website is anything but slick. It's totally functionary. I'm very happy that we have a County that uses modern technology to make sure that all of the citizens have access to the information they need relative to minutes, relative to meetings, relative to public hearings like this, and relative to the documents that anyone who wanted to prepare themselves for these public hearings would be able to access extremely easily. As far as cost goes, the Planning Commission spent no money; neither did the Land Use Staff who posted those. The County pays for the website and it is in the line item in your budget.

Williams: I agree with Ken. I didn't see anything slick out there because I did a lot of it. The comparison that has the actual tasks from the current version and the proposed, and a list of no points saying this is what changed, I did that. It didn't cost anybody anything. It cost me some money because I used my own ink. I didn't do it in a vacuum. I did it and brought it to a Planning Commission meeting and all of the Planning Commission sat there and reviewed it and agreed that it was accurate. This was not my presentation; I was the fingers for the group.

Richard Wojciechowski asked, how many houses in the Ouray city area have lasted more than 20 years and have not had some work done on them.

Risch: I don't have the answer to that but I'm sure that Mr. Wojciechowski could find out from the building department in Ouray. I will say that, like any other place with a building department, you can pull a permit if you wish to change your house in any way and then you are subject to City Code as you do it. It's no different in the county.

Currin: I have an office in Ouray and I've lived in dozens of houses up there, and it's an ongoing project of adding on and remodeling. I think his point was that the limit of one remodel for a non-conforming structure is too limiting, and I agree.

John Peters, referring to Section 9.2.E.(2), "*The County shall make the determination as to whether a structure is historically accurate*" asked what qualifications the County had in historic representation.

Williams: My thought here is that there is very specific criteria in that section that is, if a structure "*is consistent in architectural design including size and building mass, style and color to existing structures built prior to 1920 and located within one mile of the proposed structure,*" and the Code goes on to say that the applicant shall provide data to support the designation. I think our thought there was that an applicant could bring in photos of buildings, you can look at County Assessor data to see how old they are, get a photo of them, measure if they are within a mile or not, and also there are some structures that have been formally designated as historic in our county, and that would be another example to use.

John Peters asked, is apparent or perceived building mass included but not limited to who determines what else can be used as a design element.

Parker: The simple answer to that question will be that it will be the Land Use Staff that will make that determination at first blush. But all of the other questions that Mr. Peters asked are good questions about screening, glare, the use of certain words in the definitions of structure and weighted average. All of those things, I hope, if the BOCC receives this and adopts any portion of it, there is to be a companion guide that the BOCC has said would travel with these regulations that whatever needs to be fleshed out can be done so with the assistance of the building community to make it clear to both the builders and the consumers as to what is meant. Certainly, we could go through and answer each one of these but I think the general

answer is that we hope that we have addressed some of the confusion and vague language that we saw in the prior Section 9 but I don't think that we are perfect. I expect that reasonable people may differ over some of these interpretations and they are going to have to be fleshed out. I think the companion guide is the place that this can be done and, hopefully, if any portion of this is passed by the BOCC, that the building community will assist in the drafting of that companion guide with the Land Use Staff.

Lipton: The last part of his question refers to 9.6 definitions on weighted average. This refers to the weighted average of the roof height. This was pretty strict in the original Section 9 and we modified that based on builder input to take on determining the weighted average, and this is for the point system, and if any portion of the roof was 35 feet that was how the points were assigned. Now we're taking the weighted average, which is much more liberal in interpretation. But John also mentions that, regardless of visibility to view corridors. That's not correct. The only portions of the roof that are measured are portions that are visible from the view corridor. So, if the roof is not visible from the view corridor it does not figure into the calculation.

Carla Choate asked how many people would the County have to hire on the public payroll to enforce these regulations.

Lipton: We have a fee structure for building inspections and anything that the Land Use office has to provide. Those fees are based on what the Land Use office estimates as its cost to conduct those examinations or test, or whatever. Therefore, if building reaches a point where the Land Use office needs to hire more people, that is planned to pay its own way. I'll have more to say on the cost of new construction later on. That question is really not answerable, except to say that, in my opinion, any additional public employees that are needed to enforce these regulations should be compensated by the fees.

Baskfield: John Peters's question regarding weighted average building height is accurate in that right now we are measuring the entire roof including visible and invisible from the viewing corridor. Pushed in that direction, was the difficulty in measuring a roof height based on vegetation. What that requires is setting story poles in the field early in the process of siting and designing a building and actually looking at that in the field, or some pretty advanced 3-D topographical modeling along with vegetation and heights, and sometimes a combination of those two. The effort was towards what most jurisdictions do, that is to take the whole roof height, take the average, and it does not consider whether part of the roof is invisible or visible.

Williams: What that means, and John is absolutely right, and we did this again with input from Staff and from the builders, Tim and John did a presentation to the Planning Commission on September 6, 2011. On the presentation it says, measure for height of structure from the building plans because being out in the field with potentially multiple roads looking at it, that would be extremely difficult. What it does mean is that if the high part of your structure is hidden by natural vegetation, your impact is going to be overstated, but if it's the low part it will be understated. We did this based on the input from our experts and from Staff who have to do this in the field.

John Peters asked how a pond adds to screening.

Lipton: Ponds are included in measuring screening because they may help to blend and be in harmony with the natural scenery around the structure.

Williams: Going back to the question about the design elements, we absolutely have experts on the Planning Commission. John's an architect and Tim's a builder. And, we had Larry Kumpost who was also an architect on the Planning Commission for a good number of years. A lot of ideas in here are from him. The idea of having a list is that if we accidently left something off that one of our fine architects wanted to use, it would be a shame to not have some flexibility in the language. So we said, here are the kind of common things but if our architects, our builders and designers come up with something that is really cool, that really does work, we did not want to not allow it. The idea was to allow more flexibility and not less.

Lipton: I just wanted to go back to the point system relative to height of structure. There are three things of a point awarded for every foot, and this is impact criteria, not mitigation criteria. Three-tenths of a point is awarded for every foot of the weighted average height of the structure visible from the view window.

Linda Ingo asked, will the added cost of screening force less affluent people out of the county or will it cause buildings and roads to penetrate further into the areas where wildlife retreat? Will it cause some properties to diminish in value?

Parker: The proposed changes that the Planning Commission worked on actually reduce the number of points for screening. The issue is that, while natural screening is effective, additional screening or landscapes may be less effective over time. Plants die and they are expensive to replace. Taking that into consideration, when, as Sheelagh indicated, the Planning Commission test drove the various scenarios we intentionally did not give as many points to screening and additional screening as had been previously given. The question about will that cause buildings and roads to penetrate further into the areas where wildlife might retreat, actually the proposal offered by the Planning Commission for the first time awards points after the first 100 feet up to 600 feet. But, after the first 100 feet, points would be awarded at 200 feet from the road, at 400 and at 600. This incentivizes people to push the building back further than the minimum requirement of 100 feet but not as far as it was under the previous point system that did not award points until you were back one-quarter of a mile. So the hope would be that there would not be a need to push it back as far as under the previous regulations. Certainly, if you are trying to maximize your points for distance you may try to push it back further.

Currin: These are good questions. The overall cost of our proposal that the majority is in favor of, not just the cost of screening but the overall cost, will definitely force less affluent people out of the county and it will encourage longer driveways. Other jurisdictions discourage long driveways. They are a scar on the landscaping. They also cost an average of $32 per foot for a driveway on average in this county with shallow utilities, according to McMillan Engineering. So that will weed out the people without the deep pockets. Will it cost properties to diminish in value? Absolutely. Many properties will diminish in value. When you force someone to build where the view isn't there, that property is worth a heck of a lot less.

Lipton explained that there were a couple more questions that came up tonight and Sheelagh was in charge of recording those. I will ask her to read them.

Williams: As to the question about the removal of protecting property rights in Section 9.1, it has already been addressed. The second one is "*Have private property rights been violated if rules change during ownership?*" And, "*Does the County have a responsibility to notify property owners of non-conforming structures?*"

Currin: This is a can of worms. The disclosure that is going to be required to these sellers on these properties is a big liability, and tracking the non-conforming structures and whether disclosures are made, I don't know who is going to follow that but there is a lot of liability for many sellers out there.

Williams: I wanted to address the private property rights being violated question. I will talk a lot about that later because we've had a number of attorneys during this whole two-year period. We have memos from prior County Attorneys.

Lipton directed that the Planning Commissioners would go around the table and discuss any general impressions that they may have from the comments received and the comments made at the public hearings, and address overall feelings on the visual basis relative to Section 9.

Baskfield: I was invited to apply to serve on this Planning Commission because of my work as an architect. A large part of my interest professionally is in siting buildings carefully on the landscape. As a Western architect, on these naked landscapes I've always been really interested in that problem of how to build appropriately in that environment. That continues to be my main challenge and point of research, study and work. In general, I am very much a supporter of some sort of regulation to protect our amazing landscape here. I have struggled over the last two years with the process, and I'm not a supporter of the Draft as it reads. I've talked about the problems that I have with this Draft throughout the process.

All of my major concerns are still present. They involve, for one, skyline and how we are applying skyline everywhere in the county, not just, as most other jurisdictions do, along ridgelines and certain designated ridges and hilltops, but everywhere – in subdivisions, on the valley floors, oblique views down the valley. What we do when we do that is we say we do not allow the line of a building to interrupt the sky no matter what. When, in my experience as a designer, you are trying to control ridgeline development or high development,

you want to keep the building down off the top but you can't, say in a subdivision or on the valley floor. If I happen to drive by it, it interrupts the sky. To me, the primary problem with this Draft is how we are dealing with skyline and applying it everywhere, and how tremendous and how many people that will affect and how little we know about that, how little we understand what that means for skyline.

My other primary struggle is with the point system. We talked about having tested the point system and showing that those projects since 2009 that have applied and passed the point system in the old system would also pass in this system. But what we saw was that in the new system those projects were a lot closer to failing, which tells me that we have a tougher point system. We have also removed something from the old point system that allowed a landowner who wanted to build a relatively large house to plant screening. That is, like it or not, what the big wealthy landowners who are building estates have done throughout the ages. What we have effectively done is we have brought down the ability for big projects to be built here. I'm not a huge fan of huge projects but we've done that by toughing up the point system. While we talk about the point system, we also extended this visual impact code to all these roads that we're talking about including.

I have several other struggles with the Draft but I don't want to talk about that now. It's important to say that I think that everybody who has been working on this has done so really wanting the best for our county. And, I think that any disagreement that happens is simply that, we simply disagree. I don't think that anybody is trying to take anything away from anyone. I think everybody is working hard, they are volunteering countless, countless hours, not only three times a month at the meetings but also hours and hours in preparation and research, and creating presentations and the like. I'm thankful for that. But I am very concerned about the Draft.

Case: I had some specific comments on the PowerPoint presentations that were made. First, the Ad-Hoc Committee's presentation. It appears that twenty-one of the photos in the presentation were taken with a telephoto lens or were enlarged, and the other four photos that appear not to have been enlarged or taken with a telephoto lens were not labeled as to where they were taken from, on a road, off a road, etc. All the photos taken to determine skyline break must be taken with a 50mm lens and from the centerline of the road. The BOCC acknowledged this at their meeting on the morning of February 26 when they reviewed the photos taken by Staff of the Tucker property, and some of which were not taken from the centerline of the road and not taken with a 50mm lens. I would suggest that the Ad-Hoc Committee might want to review their photos before they present them to the BOCC if it's in connection with skyline breakage. While I'm sympathetic to many of the issues that were raised by this presentation, my problem with the Ad-Hoc Committee's presentation is that they have not proposed any written amendments or language to carry out their criticisms of the Draft Section 9. The Planning Commission has repeatedly asked them for language or amendments over the last two years and has not received any. So we don't really know what they're proposing in concrete terms. The presentation did raise some valid points so I am going to propose some amendments to the Draft Section 9 later on based on their comments.

Concerning Donna Whiskeman's current visual impact road PowerPoint presentation, my biggest criticism of the comments she made concerning the seller's property disclosure form, SPD19-10-11, on page three of the draft minutes of our County Planning Commission meeting from February 26, she stated that if your home is a non-conforming structure you have a duty to disclose that. The real estate professionals will require it. She also showed a PowerPoint slide presentation that showed parts of pages 1, 3 and 4 of this form that was captioned: "*If you sell your home you have a duty to disclose that you are a non-conforming structure.*" Section H of this form is entitled "*Use, Zoning and Legal Issues, Do Any of the Following Conditions Now Exist.*" "*Now exist*" is very important. Subsection 2 of Section H is entitled "*Zoning violation, variance, conditional use, violation of an enforceable PUD or non-conforming use.*" That is non-conforming *use*, not non-conforming *structure*. Non-conforming structure is not listed anywhere on this form. So there is no duty by a seller or their realtor to disclose a non-conforming structure. In my personal and legal experience I've used forms like this and you've had to disclose an existing non-conforming use, but you do not need to disclose a non-existing, non-conforming use that a buyer might want to use the property for in the future. By the same analogy, a seller and/or their realtor have a duty to disclose an existing, non-conforming structure, *e.g.* a structure for which the seller never got a building permit or other such things. However, there is no duty to disclose a non-existing, non-conforming structure. In other words, a structure that would only become non-conforming if the buyer decided at some point in the future to remodel or reconstruct the house. I would ask the realtor community if they are currently disclosing any house built during 1997 or before then as a non-conforming structure under the present visual impact regulations passed in 1997. Also, do they disclose that a house being sold does not meet current electrical, plumbing, septic system code if it was built before the new codes were enacted? This whole

argument, in my opinion, is ludicrous. A buyer has to expect that if they decide to remodel or reconstruct a home in the future they will have to bring all of the area remodeled or reconstructed up to the current county/state zoning regulations. If I were the seller's attorney and the seller's realtor was demanding that a seller disclose a non-existing, non-conforming use or structure I would advise the seller to fire the realtor for trying to sabotage the sale of their home, and I would advise the seller to file a complaint against the realtor with DORA. If such an action by the realtor resulted in a lost sale I would advise the seller to sue the realtor for negligence. Having said that, Donna also brought up a number of relevant and valid concerns and criticisms on this, so I will also be making several suggestions for amendments on this Draft Section 9.

As far as the Caldera Mineral Resources presentation, I will also be making several suggestions for amendments to the Draft based on their criticisms.

Currin: I've been involved with the Planning Commission for the past two years in the course of over a hundred meetings and workshops. I've struggled to understand why the County needs to expand the visual impact regulations and why Section 9 of the Land Use Code needs a wholesale overhaul.

As part of the minority opinion on the Commission, we've offered alternatives to many aspects of this discussion. Most of our alternatives were rejected by our fellow Planning Commissioners. For example, we suggested that the question of which roads might be added to the visual impact corridor should be delayed until all aspects of the regulations were finalized. The majority on the Commission dismissed this alternative. They wanted to decide on the expansion early on in the process. How can you consider which roads to bring in until you know what regulations would be imposed on these roads and on those properties? Also, the exercise of comparing current corridor roads to potential roads using only the tourist benefit rule was flawed and contrived, in my opinion.

Our minority suggested that the point system should be easier to understand and easier to achieve approval for a building application. The majority rejected this alternative and stated several times that they "*did not want to water down the regulations.*"

We offered that restricting building on a bench was not reasonable since benches are a common topographical feature of the county. Many parcels only have logical building sites on benches. We pointed out that there were other jurisdictions in Colorado that restricted buildings on ridgelines and hilltops, but none restricted building on benches. The majority rejected our alternative.

On the question of skyline breakage, our minority offered an alternative that would allow skyline breakage in situations with an oblique or falling away horizon, as with down-valley views. The skyline breakage as is in the proposal before us is unprecedented in planning jurisdictions. The majority rejected our alternative on skyline breakage.

The minority offered an alternative to eliminating the mitigation points for size of parcel since this serves to lower density. It seemed like a good rule that would work for larger parcels but the majority was not willing to compromise and pointed out that the distance from the road was a better source of mitigation points. Few parcels in the county other than the un-built on escarpment lots on Log Hill could benefit from distance from road mitigation points. For instance, a forty-acre parcel that measures one-quarter mile by one-quarter mile can't distance their house more than a quarter mile from the visual impact corridor if they adjoin it. Moving the site for the house another half mile is not an option for that property owner. So, those distances from road mitigation points are generally not available.

When I joined the Planning Commission two years ago I was perplexed as to why there was a remarkable problem, a pending crisis in the county that would necessitate such a huge rework of the visual impact regulations, which had worked quite well for over 15 years. Two years later I look back at all of the meetings and burden on the resources of the County and I'm appalled at the process.

When the minority requested that we discuss the cost to property owners if the new regulations were adopted we were told that was outside our scope of responsibility. During the public hearing process we heard from several builders and architects that there will be substantial cost related to the proposed regs. Realtors have told us the obvious. If you have to move the site for a home to an area of a parcel with little views, the value of that property goes down.

The input from the public has been substantial and I respect each of the opinions as submitted. I read the emails and letters at least twice each. What I see from the input is that the majority of people who own property

in the town of Ridgway and the city of Ouray, and in areas of the county not subject to enlargement of the impact corridors, is in favor of putting the restrictions on other property owners; whereas, the majority of the people who submitted input and whose properties would be directly impacted by expansion of the corridors are adamantly opposed to imposing these regulations on their properties. I put more weight in the opinions of the people who will be directly impacted with their properties but I respect all of the opinions.

The whole idea of limiting remodeling of existing structures to once in a lifetime and only twenty percent enlargement is ludicrous in my view. The minority on the Planning Commission disagrees strongly with this concept and our alternative ideas were rejected by the majority.

In my view, this project of considering changes to the visual impact regulations should have been a consultative approach with a few independent experts reviewing our current regulations and offering suggestions for improvement. The majority of our Planning Commission has no background and little knowledge of design and building concepts, and far too much time has been spent due to this lack of ability to grasp concepts. The County Commissioners cautioned our Planning Commission not to arrive at a one-size fits all solution to visual impact regulations. Heidi Albritton visited us at one of our meetings and told us that. The proposal here tonight is a one-size fits all solution. I support private property rights. Burdening property owners with onerous and costly restrictions that weren't in effect when they bought their property is against my better judgment, and I think it defies reason. If the County Commissioners adopt these proposed regulations Ouray County would become a large homeowners association, and the County Planners and Planning Commission would be the architectural design committee.

Finally, let me say that I think that all concerns in our county should be represented on the Planning Commission. I think that special interest groups should be represented on a commission; I just don't think that control of the Planning Commission by one special interest group serves the county as a whole. I'm opposed to recommending this proposal on visual impact regulations to the Board of County Commissioners.

Williams: Like John, I think we've had a good group here. The Planning Commission members who are on here now –there were a lot of other guys such as Bob Luttrell who was on the Commission for a long time, Geoff Scott was on here for a short time, Carl Cockle was on, Ted Collins, Larry Kumpost, it has been a revolving door – but there has been a lot of input and, like John, I think that everybody on this Planning Commission is trying to do the right thing. We can disagree, but that happens. I have some specific comments when we get into actually talking about the context so I don't want to necessarily address that now because I think we are looking at some potential amendments and before I say what I think about what it is, I want to see what it is.

I have a great deal of respect for all of my Planning Commission members. Everybody brings something to the table. We've really benefitted from John's input. He did a wonderful presentation on a particular lot that was thought to be problematic and showed where a two-story house could be built. Tim does a lot of work going out and driving the roads and looking at homes, etc. Everybody brings something to the table. I think that it does represent a compromise. Tim didn't get everything that he wanted and I can tell you for sure that I didn't get everything that I wanted. I will go into the details of that later.

I wanted, also, to thank the public because your input has been tremendous. The presentations, the letters, there are so many valuable things in there, and getting to understand the perspective from all of the people, some of whom we didn't hear from during those two years, or heard from very rarely. I thank everybody for coming and for their input and I hope you see that, as we proceed, we are listening and we're trying to come up with something that really is going to work.

Parker: I, too, want to thank everyone for attending these public meetings, for participating, and I do believe that all of your opinions are necessary in order for us to be able to do our job, to listen to you and then try to address concerns and evaluate the proposal that we have. But let me, for a moment, just take a different tack.

After listening to the public and reading all of the written comments both for and against the visual impact regulations, it appears to me there's much upon which everyone agrees. We live in a spectacularly beautiful area. Ouray County's unsurpassed natural beauty is one of the finer reasons that people come to Ouray County to visit, to play, and ultimately to live. The citizens of Ouray County value its scenic beauty and have historically done a good job of protecting and preserving what the Master Plan identifies as the visually significant and sensitive areas of the county that provide the scenic backdrop and vistas that all residents and visitors of Ouray County enjoy. The current impact regulations have generally done a good job in helping to protect and preserve the significant and sensitive areas in the existing view corridors. The current view

corridors do not cover all of the roads or all of the land in the county. Homes built outside of the current view corridors are not subject to and do not have to comply with the current visual impact regulations.

We disagree on a number of issues. The concerns raised during the public hearing and in the written comments can be separated into two broad categories. One group of concerns is centered around the belief that the current regulations have done a good job, need only a few minor changes, that there is no compelling reason to add roads to the current visual impact corridors, that if additional roads are added a significant number of non-conforming structures will be created and these non-conforming structures will present serious problems. Property values will decrease and taxes will likely increase. The other group of concerns focuses on the fact that the current regulations protect only a fraction of the county. If the proposed changes are not adopted, homes will be built in the unregulated areas of the county that could compete with the natural scenic backdrop and vistas, and that these homes would diminish Ouray County's most valuable asset and that this would negatively impact the underpinnings of our economy. The first group described the proposed changes as a solution in search of a problem. The second group described the proposed changes as a solution to a predictable problem.

These two competing views make it clear to me that the BOCC that assigned the PC the task to review the current visual impact regulations and the Planning Commission did not do an adequate job of informing the public of the factual basis that supports the need for changes to our current visual impact regulations. If we can't agree on the need to protect any portion of the county outside of the existing view corridors there is little chance that we will be able to agree on any of the changes to the visual impact regulations.

What facts support the need for additional protection? First: population trends. The 1990 census lists the population of Ouray County at 2,295. In 2010, the census lists the population as 4,436. This represents an average increase of 4.7% per year. The Ouray County website lists our current population as approximately 4,560. This represents a 5% increase per year over the last two years. If these growth rates continue, Ouray County can expect an average growth rate of between 4.7% and 5% for the next 20 years. Based on these predictable growth rates our population will nearly double in the next 20 years.

The Theobald Study. This Ouray County-based build-out analysis was conducted in 2008 and was based upon Ouray County population trends and Ouray County land use data. The study concludes that a 4.7% growth rate will add an additional 4,000 homes in Ouray County by 2025. A companion study by the Rural Planning Institute (RPI) provides a fiscal analysis of this predicted growth. According to the Ouray County Study Group, which reviewed both the Theobald and RPI studies, the findings were intended to be used by the BOCC and other county officials and boards, including the Planning Commission, in their strategic planning.

The Telluride Foundation Alternate Futures Studies. The Graduate Schools of Design at Harvard University and the Massachusetts Institute of Technology undertook a study funded by the Telluride Foundation to understand and model regional economic, ecological and community interactions to assist regional community leaders in making decisions that might affect the region's future. The study examined visual preference factors and found that mountain views, natural scenic views, and distance views were all positive factors, and that new development views were a negative factor. The study concluded that these factors are especially important when viewed from public roads. The study, which was conducted in 2008, concluded that Telluride and Mountain Village would effectively build out in 10 years, that Telluride and Mountain Village were already exporting the demand for housing, and that this demand will increase the demand for housing in Ouray County. The study found that the magnitude, scale and speed of development, together with its resulting impacts, will require thoughtful, fact-based, far-reaching decisions from community leaders. One of the final conclusions of the study was that it would be a challenge to maintain the character of the region, including Ouray County, and that it was highly likely that the landscape would change from one of isolated urban areas separated by beautiful natural landscapes to a more generalized, urbanized landscape. The study found that this will be especially the case in the public views from the region's roads and that this could negatively impact the perception of the region, including Ouray County, as an attractive destination which in turn could negatively impact Ouray County's economic future. The population trends for the last 20 years and these studies predict that thousands of additional people are likely to move to Ouray County in the next 10 to 20 years, and that thousands of additional homes will likely be constructed in the same time period to accommodate this influx of people. While the time projections may be stretched over a few additional years because of the recent recession, all of these factors indicate that thoughtful, farsighted, fact-based, strategic planning will be necessary in order to preserve the unsurpassed natural and historic beauty of our County.

Let's look at how this review process began. It is important to remember that the current VIR was begun by the BOCC in response to a failed attempt to address citizen concerns about residential development on mining claims in the south end of the County. After abandoning the proposed South Alpine Zone, the BOCC sought to protect the south alpine area as part of a proposed revision to the current visual impact regulations, which included expanding the visual impact corridors to all County roads and making blending mandatory across the county. The BOCC directed the PC to not only review the current visual impact regulations, but the BOCC draft regulations and to address a series of specific items. The BOCC specifically requested that the PC determine whether the expansion of visual impact regulations to other visual impact corridors was necessary and appropriate and to base this determination on four specific criteria: 1) the amount of private land and potential for future development; 2) direct access routes to public land; 3) economic benefits important for recreational tourism and the regional and local economy; and 4) visually significant areas classified as classic Ouray County vistas including agricultural vistas essential to Ouray County's character. That was the assignment. As part of its deliberative process the Planning Commission collected data on all numbered County roads using the criteria specified by the BOCC. We analyzed and evaluated each numbered road and compared these roads to the roads in the existing visual impact corridors. The Planning Commission has only included those additional roads which meet or exceed the numerical values for the roads currently included as visual impact corridors. Many of these roads are in the south end of the county. If visual impact corridors are not expanded, these roads will not be covered. The failure to apply visual impact regulations to roads that are substantially similar to the roads currently protected, would be to ignore the directions in the BOCC resolution and fail to follow the stated purpose of the County Master Plan.

What facts have been offered to support the need for no additional visual impact protection? The linchpin of this argument is that there is no need for additional visual impact regulations; that the current regulations are doing a good job of protecting the county's spectacular natural beauty. This task, according to this argument, has been accomplished. No further protection is necessary, and the proposal offered by the PC will harm our economy and hurt our residents.

While everyone agrees that the current visual impact regulations are protecting the significant and sensitive areas in the current view corridors, they cannot and do not protect the sensitive and significant areas outside of the current view corridors. Implicit in the argument that there is no need for additional protection is the assumption that the areas outside of the current view corridors do not warrant protection. No facts were offered to support this conclusion. No facts were offered to dispute the population and housing growth projections in the Theobald, RPI and Telluride Foundation studies. The facts which were offered seem to be addressing concerns about the reasonableness of the scope and the provisions in the Planning Commission proposal.

Several members of the public expressed concern about the reasonableness of the expansion by focusing on the number of roads in the current visual impact corridor and the number of additional roads included in the Planning Commission proposal. This comparison misses the big picture. A significant number of additional roads are proposed to be added; however, the map presented by the Land Use Staff shows that the linear miles of road in the current visual impact corridors and the linear miles in the proposed expansion are substantially similar, approximately 100 miles each. Another way to state this is that the scope of the proposed expansion is roughly the scope of the original visual impact corridors.

According to the homepage of Ouray County, Ouray County covers 542 square miles. At the outset of the review by the Planning Commission a map was presented showing that the existing view corridors cover 211 square miles. This means that the current visual impact regulations apply to less than 40% of Ouray County. Another way of stating this is that in more than 60% of Ouray County a new home can be built without having to comply with any visual impact regulations.

The analysis by the Planning Commission of all County roads clearly demonstrates, using the criteria suggested by the BOCC, that there are a significant number of roads that are not only substantially similar to the roads that are currently protected and included in the visual impact corridor, but that these substantially similar roads contain visually significant and sensitive areas that deserve to be protected. Those who believe that there is no need to expand visual impact corridors have not offered any factual basis to differentiate between the roads in the current corridors and those in the proposed additional corridors.

Some of the individuals argued that there is no compelling reason now for the proposed expansion of visual impact corridors. This argument fails to take into account not only the specific instructions from the BOCC, but also fails to consider the requirements of the Master Plan, as well as the basic function of the Planning

Commission. We are not members of a crisis commission. We are members of a planning commission. Our job is to look into the future and develop a plan to deal with the foreseeable growth in a manner that is consistent with the goals and objectives stated in the Master Pan. It is not about slow growth or no growth, it's about making sure that future growth will be respectful of Ouray County's spectacular natural beauty. One member of the public put it this way, "*Once it's gone, it's gone.*"

With respect to regulatory philosophy, it was stated in the realtors' presentation that 144 new homes have been built in the last several years outside of the existing view corridors; that none of these homes have created a problem by competing with our scenic vistas for the viewer's attention and that no one moves to Ouray County to destroy it. Essentially this argument boils down to a belief that there is no need for any visual impact regulations. People who build in the unprotected areas of Ouray County will always do the right thing. All of Ouray County's zoning and land use regulations involve a balancing of individual landowner rights and the rights of the County to impose reasonable regulations to manage growth in a responsible manner consistent with the goals and objectives of the Master Plan. Not everyone does the right thing.

Non-conforming structures. Concerns were raised about the reasonableness of the Planning Commission proposal based on the opinion that the proposal would create a significant number of non-conforming structures and that these non-conforming structures would have a significant adverse impact on the economic future of Ouray County and its citizens. No factual data was offered to support these concerns. These concerns are directly contrary to the data reviewed by the Planning Commission on non-conforming structures and non-conforming parcels. The data shows that a significant number of non-conforming structures will not be created. The number of non-conforming structures and parcels was confirmed by a Planning Commission field trip to a number of the proposed roads and a number of the current roads. While the proposed expansion of the visual impact corridors will create some non-conforming structures, the numbers are similar to the numbers that were created when the original visual impact corridors were established. Non-conforming structures are regularly created when a land use code is changed. For example, when new setbacks are established. It is the method used to permit existing structures to remain while new structures comply with the newly established standards. This is not unique to visual impact regulations.

It is instructive to look at the history of the non-conforming structures under the current visual impact regulations. In the fifteen-year history, only one non-conforming structure applied for a variance and it was granted. Therefore, there is no factual basis for the belief that a significant number of non-conforming structures will be created, and no history of non-conforming structures having been a problem under the current visual impact regulations. To the extent that the predictions about decreases in property value and a possible increase in property taxes flow from the concerns about non-conforming structures being a significant problem, it appears that these concerns are based upon an unsupported premise. If the concerns about decreased property values and increased taxes are based on a belief that visual impact regulations generally cause property values to decline, the data from the County Assessor's office does not support this conclusion. The data reviewed by the Planning Commission clearly demonstrates that properties in the current visual impact corridors have higher property values than those outside the current corridors. While reasonable people can differ as to whether this higher value is attributable to the current visual impact regulations, there is no evidence that during the fifteen-year history of the current visual impact corridors, visual impact regulations have caused a decline in property values. If a decrease in property value is not supported by the sales data from the Ouray County Assessor's office or the history of the current visual impact regulations, then, without additional facts, there is no support for the opinion that there will be a decrease in property values that will lead to an increase in taxes.

Opinions without supporting facts are merely opinions which cannot be supported or defended.

What are the consequences? What are the risks associated with adopting either of these competing views of the future of our county? If we adopt the view that Ouray County has good visual impact regulations that protect all of the significant and sensitive areas, that there is no need to expand the existing corridors, then we must be willing to permit houses to be built in the 60% of the county that is outside of the existing view corridor without requiring these houses to comply with any visual impact regulations. We must also be willing to accept the fact that some portion of these new homes could compete with the natural scenic beauty that provides the backdrop and vistas that all residents and visitors of Ouray County enjoy.

If we adopt the view that there is no measurable difference between the significant and sensitive areas of Ouray County that are protected by the current visual impact corridors and those in the proposed additional impact corridors, and that the Master Plan requires that all significant and sensitive areas in the County be

protected, then we must be willing to require that new homes in the additional view corridors be subjected to visual impact regulations.

The bottom line is that if we fail to protect the scenic and sensitive areas of the county, we could compromise the amazing natural beauty that we all value and enjoy. If this happens we could seriously damage one of the prime drivers of our economy and negatively impact our quality of life. These are the foreseeable risks.

No one plans to fail; we only fail to plan.

Risch: I would like to commend my fellow Commissioners. I think they have left very little to say. But I do have a couple of items to add. The current visual impact regulations have protected the agricultural valley bottoms of the county, the residences that are being built there, and the roads that serve them so that everyone enjoys the iconic views from the valleys. What hasn't been protected yet is most of the alpine area including nearly 1,200 mining claims ranging in size from half-an-acre to ten acres, all of which could be built on in some fashion. It's a quirk of history that in the valleys it's ranching and residences, as well as those who drive the roads to share the view. In the mountains, the quirk of history is that mining and tourists and residents share the views. We need to protect that for everyone.

Thank you all for your comments. It was an eye opener to hear many of them and it has certainly given us food for thought and confirmed some of what we've already discussed. Thank you very much.

Lipton: I have a few comments, myself. We have a Master Plan. That's been alluded to by a couple of speakers. The Master Plan is a vision to balance economic growth and development with preservation of unspoiled vistas or mountains and valleys. These mountains and valleys, these vistas, are the underpinning of our property values and economy. Visual impact regulations are a vital part of that goal that seeks to protect the commons. The commons are the tangible and intangible aspects of the environment. Nobody owns, but all enjoy. The commons are protected by regulations for everyone's interest. When a property is purchased, there are inherent risks, especially when that parcel is surrounded by other vacant parcels. What will be built nearby or next door? Will it reduce the value of my property? Will it change the character of the neighborhood? Will it interfere with the enjoyment of my property? There's only one way that I know of to mitigate these risks and that's through building codes and zoning regulations. It's the only mitigation that we can really have. These risks have to be balanced by property rights. The constitution protects our property rights but there are limitations on all our rights. This extends to property. We can all own a car. We have a right to do that. But we don't have a right to drive without a license. Constitutional properties do not give the right to anyone to do whatever they want on their property. The law also gives municipalities the right to police powers to protect the common good and your neighbor's property rights. That's what the Land Use Code is all about. No zoning has very serious consequences. Does anyone really want to invest in a property in an area where there are no regulations, or very weak ones, particularly when the reasons they bought the property, chose that location, and chose that community are at stake?

Section 9 was a hard effort to reach a compromise on. We don't want to make building and development onerous, yet we want to preserve the goals of the Master Plan and, most importantly, we want to mitigate risks to property owners and prospective property owners. Assessed property values in this county are highest in the areas now under Section 9 or under HOA regulations that are actually stricter than the Land Use Code. It is well documented, not only here but in other states, that areas with the most restrictive codes have the highest real estate values. The additional roads that we've proposed have the same characteristics as the roads in Section 9 so why is there so much fear about lowered property values when evidence suggests otherwise?

Also, there has been comment that the proposed Section 9 will increase taxes due to increased costs. If property values are actually lowered, then property taxes will decrease. You can't have it both ways. Further, RPI, a company based in Durango, was hired by the BOCC in 2006 to do studies to show what the fiscal impact of development would be on the county. Their studies show that residential development does not pay its own way. Fees and taxes associated with new development do not pay for the services required to maintain the same level of service provided prior to the build-out.

Some of my colleagues spoke about the Theobald Study, which was also commissioned in 2006, that projected the total build-out possible in the community. It doesn't say that it will build out to that, but that is the potential, and land use planners have to go on the potential of what can be built out. Build-out will require more road maintenance, more police, more services. If taxes increase, then it will be the rest of the build-out, not

Section 9, that will be responsible for the increases. If it were true that Section 9 lowered property values then the tax base of the county will decrease, not increase. We can face an increase in taxes if we just depend on residential development to generate the funds needed to maintain even the level of service that we have now as the population increases dramatically. What will be the impact on roads and on community services that the County provides if we have this kind of build-out?

The things we need to look at are additional ways to raise the tax base in order to just maintain the level of service. That's what the RPI Study was about. For communities like ours, it compared how many police we have per 100 residents, how much is the average spent on road maintenance per 100 residents. As our population increases, these quotes are going to go up and that will be what is responsible for an increase in taxes, not Section 9. In my opinion there are some in this county now with a vested interest in keeping property values as low as possible. We are in a buyers' market. Lowered values mean faster turns, easier sales. We heard the term "*elite*" relative to land values. This is a code word implying, let's not enact code – it may cause property values to increase. Actually, Section 9 encourages smaller dwellings not McMansions. Elitism is not a goal of visual impact regulations. I suggest that this is a very self-serving short-term strategy that is not in the interest of every property owner in this county, nor is it in the interest of the County.

I'd like to address the agricultural community. There are a few here today. Some of them know me, some don't. I'm an agricultural producer. My wife and I purchased and built our ranch from the ground up. I have the same kind of buildings, the same kind of fences, the same stackyard fencing, and the same water problems that every other rancher has. I've dedicated much of my life to the preservation of agriculture. I'm a member of the County Ag Review Board and I work with my colleagues there to strengthen the existing Right-to-Farm Ordinance to protect ag operations. I'm the president of our local Conservation District responsible for the administration of hundreds of thousands of dollars in federal ranching grants to improve irrigation systems in the county. I have successfully worked with the state to ensure that Ouray County ranchers are an equal priority with Montrose County relative to these grants. I'm a trustee emeritus of an agricultural college and a former Chairman of the Board of that school. It is not in my interest nor would I be part of any effort to harm ag operations or the value of ag property in this county. During the public presentations some may have been entertained by the comments that were put forth but there is nothing funny in self-serving misrepresentations. By and large ag buildings including stackyards, zigzag fences and any other fence on ag properties are exempt from Section 9. All fences four-foot and under, which is a typical ranch fence, are exempt from regulation. Yes, there are some limitations placed on hilltops, ridgelines and benches. I suspect that will change. If structures are already built, they are grandfathered. Do any of you plan to build a stackyard on top of a hill or less than fifty feet from an escarpment? I don't think so.

The exemptions for look-alike historical structures are not meant to promote pre-1920s architecture but are meant to enable property owners to preserve the look and feel of our ag heritage, and this goes for our mining heritage, as well. That's been addressed in this proposal. Many historical and even newer ranch buildings built on ranches on Highway 62, Highway 550 and County Road 24 are already in the visual impact area and are currently subject to more restrictive regulations on remodeling and additions. Take a look at Section 4 of the Land Use Code. The proposed Section 9 has actually relaxed these requirements, not made them stricter. My property rights are not threatened. Part of my land is in the existing VIR and more will be included if the VIR is expanded as proposed. My property rights and yours are the same as they always were. We have the right to own property and exclude others from its use. You have the right to be fairly compensated if the government takes your property. Section 9, by any legal standard, is not a taking. We would not be here tonight if any one of the four County Attorneys that have overseen this process thought it was.

What is at stake here are individual property values and the larger interests of the community of which we are all a part.

An interim report to the BOCC was alluded to in one of the letters. This report was made in December 2011 at the request of the BOCC and was a published agenda item at an open BOCC regular meeting. It was nothing more than a report on where the deliberations were at that point in time. It was not a presentation of predetermined ideas as was alleged, but a progress report. Since then, many changes have been made.

A letter alleged that I excluded the BOCC from this public hearing process. It's ludicrous. I must have some powers that I don't know about. I can't exclude the BOCC from anything. As a matter of fact, and prior to the public hearing process, I was authorized by my colleagues on the Planning Commission to attend a BOCC meeting and I asked if they wanted a joint workshop, which we had done in the past on difficult items, prior to

going to public hearing. On Attorney's advice they rejected that. Again, on Attorney's advice they rejected having any participation with this public hearing process. There are legal reasons for that. They were excluded by their own choice based on County Attorney's advice. I had nothing to do with that.

Someone stated earlier tonight that the County has spent tens of thousands of dollars on Section 9. Where does that number come from? What facts are there to support that kind of expenditure? The County established no budget for Section 9 review. Staff is salaried and their job descriptions include working on the Land Use Code and with the Planning Commission. The Planning Commission is unpaid. More importantly, no matter before the PC or Staff was delayed because of Section 9. Section 9 deliberations were put aside whenever there were applications or other matters to be processed on a timely basis. There's no substance to this assertion.

Finally, I would like to comment on the hostility and personal attacks directed toward me and some of my colleagues on the Planning Commission, particularly in the last several weeks. We are unpaid volunteers who have given an enormous amount of our time to the conduct of County business. Each of us was appointed by bipartisan BOCCs in an open and highly competitive process; a process in which we were questioned about our experiences, abilities, and willingness to look at each matter before us in a fair and impartial manner. We are a body that is only authorized to make recommendations to the BOCC. We do not legislate or make final rulings on any matter. All of the recommendations on Section 9 have been made in publicly noticed and open meetings and work sessions, including tonight. As Chair, I saw to it that public comment was invited at each and every meeting even though we were not required to hear public comment at work sessions. I never turned anyone down from speaking at one of our work sessions or at a regular meeting.

It is important to note that nothing in the Section 9 draft has been final and will not be final until public hearing deliberations are concluded, hopefully tonight when the Planning Commission votes on the final draft. We've been accused of submitting predetermined ideas. This is false. It's cynical. It's wrong. All resolutions forwarded to the BOCC reflect the majority or consensus decision that was made openly. We have worked on several other sections of the Code, acted on applications and other matters required to be reviewed by the Planning Commission. None of these actions have been criticized or maligned, nor have they generated personal insults and intentional misrepresentations of our decisions. This is a small but diverse community. People have differing views on government's rights and what is best for the community. Do these differences warrant personal insults and attacks on personal integrity or community organizations some choose to join, or can they be discussed constructively? There are apparently several self-appointed Joseph McCarthy wannabes in this community bent on divisive rhetoric. Unable to find legitimate ways to disagree, incapable of making factual arguments for their positions, they choose to name call or manufacture misrepresentations and exaggerations. Too frequently, this is in self-interest and not in the interest of the community. Our county depends heavily on unpaid volunteers who serve on many commissions and committees. Think about the chilling effect this has on community service.

I thank the many citizens who have spoken and written. I'm deeply disappointed in those that have chosen this opportunity to make personal attacks and misrepresentations. On the other hand, I'm pleased to note that the majority of comments, both pro and con, were constructive, helpful and important, and I'm confident that these comments will be carefully considered. And, I expect that some will be adopted tonight. Thank you.

Lipton stated that we are now moving on to the final section of this meeting tonight. I would like to entertain a motion to forward a resolution to the Board of County Commissioners with a recommendation to approve or deny the Planning Commission Draft.

MOTION: **Williams moved to forward a resolution to the Board of County Commissioners with a recommendation to approve the Planning Commission Draft for purposes of discussion and to entertain possible amendments to the proposed revisions.**

SECOND: **Parker seconded the motion.**

VOTE: **A vote was taken and the motion passed 4 to 1. Currin voted in opposition.**

Lipton stated that we will now go through the actual draft, section by section, and I'll call out what section it is for purposes of the minutes. If anyone has an amendment to offer, please do so at that time. If it is

seconded we will go into discussion mode and then we'll take a vote. And that will become the formal amendment to the Draft. Mark Castrodale will post up on the screen any amendments that are made. This is the actual record that will go forward to the County Commissioners.

Section 9.1 - Purpose

Lipton asked if anyone had a revision to Draft Section 9.1 Purpose.

MOTION: Parker stated, I propose that we add back in the connection between the purpose and our economy, and I would indicate that after the words at the very end where it says, "*Ouray County*" insert the words "*...and are the foundation of our economy.*"

SECOND: Williams seconded the motion.

Williams asked the County Attorney if there were any legal issues with having that in the Code.

Whitmore replied that she would not opine on any of the amendments made tonight. She advised that the Planning Commissioners do what they think is best but she would not opine on the fly.

Parker noted that the previous language had said "*...and protecting the County's property values.*" I think that for the reasons that Sheelagh articulated about the concerns from the BOCC that this is a more general language but still makes the connection between our economy and values, and the purpose of this section.

Williams asked if Parker would consider a friendly amendment to say instead of "*...are the foundation...*" say "*...one of the foundations of our economy*" because there are other foundations like ag, mining, etc.

Parker was agreeable to the amendment.

SECOND: Risch seconded the amended motion.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Section 9.2 - Compliance

Lipton called for amendments to Section 9.2.A.

There were no amendments.

Lipton asked for amendments to Section 9.2.B.(1).

There were no amendments.

Lipton asked for amendments to Section 9.2.B.(2).

MOTION: Risch moved to have the language in B.(2) read, *"Accessory structures, private roads and private driveways used exclusively for agricultural or mining purposes, and not located on any ridge or escarpment."* The reason being that we define "*bench*" as "*land with both a steep slope above and below it*"; therefore, it seems to be moot that we would include it in our definition of accessory structures, etc. Benches are commonly built on. And, secondly, when it comes to mining areas it's not hilltops typically that we worry about, it's ridgelines and escarpments.

SECOND: Williams seconded the motion.

Williams had a friendly amendment. Mr. Mueller pointed out that we were inconsistent in our use of "*ridge*" and "*ridgeline*", and this is one of the one's that is inconsistent, so if we could change that to "*ridge line*" to be consistent with the definition on page 9.

Risch accepted the amendment.

SECOND: Parker seconded the amended motion.

Parker proposed an amendment to the friendly amendment. There was a great deal of concern expressed by some of the representatives of both the mining community and the ag community that somehow we were trying to, under these new regulations, change the way we were regulating ag and mining. I want to make it perfectly clear that we are not; therefore, I would like to propose that, rather than your language, we just go back to the language that currently is in Section 9 and take that language word-for-word. All it would mean is that where it says "*and*" the old section says "*and/or*" and where it says "*not located on any*" and you said "*ridge line escarpment*", the old language says "*escarpment or ridgeline.*" I am just trying to make it perfectly clear that we changed nothing. I don't want someone to argue that we were intending to do something that I don't think we are.

SECOND: Williams seconded the amended amendment.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Parker clarified the language: "*Accessory structures, private roads, and/or driveways used exclusively for agriculture or mining purposes, and not located on any escarpment or ridgeline.*"

Lipton asked for amendments to Section 9.2.B.(3).

There were no amendments.

Lipton asked for amendments to Section 9.2.B.(4).

Williams noted that Mr. Mueller had suggested that hay fences and other ag fences would be regulated by Section 9. That's not true. We are not doing that. But he did mention the classic stacked aspen fences and, of course, those are beautiful and we would not want to… he said they were more than 75% blocked so they didn't match. They are also generally less than four feet high.

MOTION: Williams moved to change Section 9.2.B.(4) to read, "*Fences which are 75% or more transparent, all fences that are four feet high or less, all fences for agricultural purposes and traditional aspen zigzag fences.*" She also suggested that the Companion Guide include a photo of aspen fences as a good example of a permitted fence.

SECOND: Risch seconded the motion.

Parker was concerned that if we attempt to clarify in here that ag fences are not included, we somehow take away from what we just did that said that all structures that are used for agriculture are excluded. We'll have to make the same kind of amendment every time throughout the document. My suggestion is that in the Companion Guide we make it clear that ag fences are exempt and that those fences used around mining operations are also exempt, because they are exclusively used. But, I think that the Companion Guide is the place to do it rather than here.

Lipton agreed. We make it clear that ag fences are exempt.

Williams asked about the traditional aspen zigzag fences. She went and looked and she is about five foot, four inches, and even the high parts don't come up above her head. They could be potentially higher than four feet. She looked at some photos she had of aspen fences and they are not 75% or more transparent.

Lipton asked if they were not exempt as agricultural structures.

Williams replied by asking about if someone wanted to do the fencing around their home.

Parker asked for the proposed language.

Williams replied, "*Fences that are 75% or more transparent, all fences that are four feet high or less, and traditional aspen zigzag fences.*"

Parker asked if she would be willing to accept that language as a friendly amendment to what was previously proposed.

Williams clarified if he meant leaving out all fences for agricultural purposes. Parker replied correct. Williams said absolutely.

SECOND: Risch seconded the amended amendment.

Williams restated the motion. I move that we change Section 9.2.B.(4) to read, "*Fences which are 75% or more transparent, all fences that are four feet high or less, and traditional aspen zigzag fences.*"

VOTE: A vote was taken and the motion passed 3 to 2. Risch and Currin voted in opposition.

Lipton asked for amendments to Section 9.2.B.(5).

MOTION: Risch suggested eliminating 9.2.B.(5) and (6) and let the current language prevail, as well as the current Section 4 prevail. Otherwise, this language demands a rewrite of Section 4 and she was not sure that it ought to go forward.

SECOND: Williams seconded the motion.

Williams noted that the these sections were added to give some relief from Section 4 that currently did not allow any expansion or modification of preexisting non-conforming structures at all. This was done as part of the concern about non-conforming structures. The Planning Commission wanted to give some relief. She was not willing to remove these because she thought that they were part of the compromise even if they were not what everyone wanted.

Lipton agreed and suggested that the Planning Commission could attach along with the documents that go forward with the Planning Commission recommendation. If they approve this section as submitted they would have to authorize the Planning Commission to review Section 4. This definitely reflects the compromise that was made. It makes remodels, additions and reconstructions easier where Section 4 currently is extremely restrictive.

Risch noted that there is always the variance process for extreme circumstances and she thought they were trying to cover extreme circumstances with the Code, itself. She suggested that the variance process should work here as it has in the past.

Williams agreed with Risch about the variance process and that by doing this the Planning Commission was making it potentially too broad or too narrow, but still thought that it was part of the compromise.

Parker asked if her proposal was to delete (5) and (6) in their entirety.

Risch replied yes.

VOTE: The motion failed by a 4-1 vote with Risch voting in support.

Case suggested a change to Section 9.2.B.(5)(1) to change 20% to 30%.

Lipton noted that Dudley Case was an alternate and that he could not make a motion. Lipton asked if any of the regular Planning Commissioners wanted to make a motion to that effect. No one spoke up. Lipton noted that they would have to pass on that.

Lipton asked for amendments to Section 9.2.B.(7).

There were no amendments.

Lipton asked for amendments to Section 9.2.B.(8).

There were no amendments.

Lipton asked for amendments to Section 9.2.C.

There were no amendments.

Lipton asked for amendments to Section 9.2.D.

Williams noted that Mr. Mueller had questioned the value of a visual impact plan for all building permits and the language in both the current and proposed Section 9.2. is unclear with regard to a visual impact plan. The language and definition in Section 9.7.T. do not match current practice according to Staff. There is no need to change the current practice; therefore, for clarification and to make the Code match current practice Williams made the following motion.

MOTION: Williams moved to change 9.2.D. to read "*Documentation demonstrating compliance with this section shall be required. For building permits the documentation shall consist of but not be limited to color samples, story pole photos, point system workshop prepared by Land Use Staff, County-produced maps to demonstrate screening calculations, building plans to verify setback requirements, and, if necessary, renderings to show how additional screening will mitigate visual impacts of the structure. For PUDs within a visual impact corridor, the documentation shall demonstrate that structures could be constructed on the proposed lots.*" And, Section 9.7.T., which is the definition of a visual impact plan, could be deleted because it is no longer necessary because it is spelled out here and matches what Staff actually does now.

SECOND: Parker seconded the motion.

Parker was not sure that we need to amend this section. If current practice is that the visual impact mitigation plan is the documentation, why can't we explain that process in the Companion Guide rather than trying to go through all of the list of documents here. What if the practice changes and additional documents are deemed necessary by Land Use Staff, or current documents are deemed inappropriate and they need something else? I recognize that we don't have a formal document that is called a Visual Impact Mitigation Plan but we certainly have a well-established practice as to what that Plan consists of and I think it could be explained in the Companion Guide without getting so far down into the weeds in the regulations.

Risch stated that it seemed to her that the fact that "*D.*" includes the sentence, "*Such a plan and commitments must be approved by the County prior to issuance of required permits, including but not limited to building, access, driveway, road construction, PUD, and special use permits*" suggested that there is monitoring of the process.

Williams clarified that she was not saying that it was not monitored. Staff is doing this and it is as Randy suggests that if somebody went to look for a visual impact plan in the file you wouldn't find it. Mr. Mueller was certainly confused by what was in there so this was basically an intent to say what we are doing rather than what we are not doing. There isn't a visual impact plan that has a cover page on it and we can go into the files to take a look at.

Lipton pointed out that the components of the "plan" will be in the file and he believed that was all that was necessary.

VOTE: The motion failed by a 4-1 vote with Williams voting in support.

Lipton asked for amendments to Section 9.2.E.

There were no amendments.

Lipton asked for amendments to Section 9.3.A.

Williams noted that the Planning Commission had received a very thoughtful letter from Mr. and Mrs. Ewing and Mr. and Mrs. Collins that caused her to go back and look again at the road data. The Planning Commission originally used a list of county roads provided by the Ouray County Road and Bridge Department. In reexamining the county road data and the 2009 County Road Map, she found that the Planning Commission had included a few minor offshoot roads from the Road and Bridge list that do not appear on the County Road Map or they are essentially privately maintained driveways. She realized that the County was in the process of adopting a new official map.

MOTION: Williams moved to modify section 9.3.A. to delete County Roads 8B, 8G, 8H, 8K, 8I, 9X, 9Y, 9Z, 24C and 24D, and 906, 906A/B that are in the same area as CR 1 north that the Planning Commission is not proposing for inclusion.

Parker asked if Williams was referring to 8I or 8L. There was some confusion as to whether it was an "*I*" or an "*L*" in Williams's notes with Williams noting that she generally would put things in alphabetical order. Williams said that she could have the report to the BOCC reflect that it is either 8I or 8L.

Parker proposed a friendly amendment to exclude the portion of the Camp Bird Road (County Road 361) that drops down and goes to the mine that was presented as problematic by the presentation, and also, seems to have some serious dispute going on now. He was not sure exactly how it was numbered but he believed that it was where County Roads 361 and 26 join and where the road goes down the hill into Camp Bird, and then the road continues and merges with the Imogene road. It was the section that goes right through the mine and it should be removed.

Williams agreed and described it as County Road 361 between the junction with 26 and the junction with 26B.

Risch asked if they were sure that it was County Road 361 and not labeled as 26.

Williams had looked at a map and believed that it was labeled as 361.

Parker stated that on the map that he had looked at it was labeled as 361 but it wasn't a surveyor's map so he did not know. Perhaps the appropriate thing to do is, as Mark suggests, have the BOCC look at it.

Risch noted that it could also be identified as the road from 361 through the lower Camp Bird property that then joins the Imogene Pass road, and then we can add in the numbers.

Lipton was afraid that it was a little loose. He suggested, since there was some confusion on at least two of the roads, to go to the written statements in the Draft.

Williams withdrew her motion.

MOTION: Williams moved that the Planning Commission include in its report a recommendation to delete the following County Roads: 8B, 8G, 8H, 8K, either 8I or 8L, 9X, 9Y, 9Z, 24C and 24D, and 906, 906A/B, and that section of the road between the junction of County Roads 361 and 26 that runs through Camp Bird and to the junction with 26B.

SECOND: Parker seconded the motion.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Parker had another amendment. On the language where it says *"...siting the structure at less than 100 feet from the centerline reduces visual impact"* he suggested adding language that said *"...at less than 100 feet but no closer than 50 feet"* which is what it was when it was discussed in the preliminary report but somehow got deleted.

MOTION: *[Parker's statement was taken as a motion.]*

SECOND: Williams seconded the motion.

Risch was opposed to this because at present in the south end of the county there are structures that are virtually on the road and 50 feet would not apply to them. I think *"...100 feet unless..."* is appropriate language here.

Lipton agreed. The Planning Commission did discuss this in great detail. The reason for this being in here is that, especially in the alpine areas, forcing a structure back off a slope may actually increase visual impact. It might have a lot less visual impact if it's closer to the road. He would not be in favor of changing that.

VOTE: The motion failed by a 3-2 vote. Parker and Williams voted in favor of the motion.

Lipton stated that next is the point system impact and mitigation criteria. He asked if there were any changes or amendments.

Williams explained that the whole time the Planning Commissioners were testing they were using an Excel spreadsheet, and the language in the distance from the structure does not match the numbers that they used to do the calculation. What she suggested was to change the language to match the math.

MOTION: Williams moved to modify Section 9.3.C. Mitigation Criteria 2. - Distance of structure from a designated road, so that the explanation reads "*1 point for every quarter mile (0.25 miles) plus 1 point for every 200 feet with a point awarded at 200 feet and a maximum of 3 points at 600 feet. Maximum available points are 9.*"

SECOND: Parker seconded the motion.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Risch did not like the use of the word "*maximum*" twice in the language. There was discussion about how to resolve her issue.

Williams liked it the way she put it.

Lipton called for a second to the motion as it was stated.

SECOND: Parker seconded the motion as stated.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Parker had a suggested amendment to number 4 under Mitigation Points regarding the apparent building mass. Doug Macfarlane correctly pointed out that it should not be a computation of just the elements; that there has to be some relationship to size. We put that in under Point 2 where we say that you get a half a point for each apparent building mass element used that mitigates the mass and scale of the visual portion of the structure by shadowing at least 10%. He suggested that in the portion of the box dealing with the points where it says 0-3 points in one-half (0.5) point increments for every element or combination of elements that comply with Section C.(2) and say below to follow the chart to know where to go to look for that explanation.

Risch suggested just saying C and listing the section.

Parker had no problem with just referring to the section; just saying see C.(2) and that will tell you where you need to go in order to figure it out.

MOTION: Parker move to add in the explanation box for points under apparent massing (see C.(2) for explanation).

SECOND: Risch seconded the motion.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Parker had a proposed amendment under Section C.(2) where it indicated that you would get the points if it was 10%. What if it was 5% for one element and 5% for another? It would seem to him that you should get them. So, he was proposing that in line two of the explanation it says, after the phrase *"...for each apparent building mass element used individually or in combination..."* just to make it clear that if a combination of these elements shades something you ought to get credit for it.

MOTION: *[Parker's explanation above was taken as a motion.]*

SECOND: Williams seconded the motion.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Parker clarified for Castrodale that in line two of paragraph two after where it says "*...apparent building mass element used...*" insert *"individually or in combination."*

Lipton asked for any further amendments to the point system. If not, he suggested a two minute break.

The hearing reconvened after about five minutes.

Lipton reoriented the group after the break and explained that they were in the narrative following the point system, Section 9.3.C.(1). He asked if there were any amendments.

There were no amendments.

Lipton asked for amendments to Section 9.3.C.(2).

There were no amendments.

Lipton asked for amendments to Section 9.3.C.(3).

There were no amendments.

Lipton asked for amendments to Section 9.3.D.

There were no amendments.

Case had a suggested proposal to Section 9.3.D.(3)(c). He proposed increasing the 15% to 25% based on public comments.

No regular Planning Commissioner offered to make that motion.

Williams wanted to address Section 9.3.E. Mr. Mueller had pointed out that this section would be too expansive and burdensome for large lots and I would confess that we were thinking about the smaller lots along the escarpment. The setback is a fire safety issue so we don't want to do the fifty feet but it's really relative to the structure. She proposed adding at the end "*...within one hundred (100) feet of the structure...*"

MOTION: Williams moved to change Section 9.3.E. to read: *"In addition to any requirements imposed by this Section, all structures falling within a viewing window and located along a ridge line or escarpment shall be set back a minimum of fifty (50) feet from the ridge line or edge of the escarpment as measured from a point marking the closest (i.e., deepest) edge of the ridge line or edge of the escarpment within one hundred (100) feet of the structure*" so that we are really talking about that fifty-foot setback for the structure as a fire safety issue.

SECOND: Risch seconded the motion.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Lipton noted that there was also an issue on setbacks on very large pieces of property that would be considered one lot. We might need some discussion that it be measured within 200 feet of each side of the house.

Williams replied that was what she was attempting to do.

Lipton asked if she accomplished that.

Williams explained and a discussion followed. She said that what she was envisioning was that the structure is sitting some place on the lot close to the escarpment and you would measure out from that edge of the structure closest to the escarpment within a hundred feet.

Risch asked if that was something that could be handled by a variance.

Williams said no, it was a problem for large parcels on the escarpment.

Lipton suggested modifying Illustration B to demonstrate it.

Williams agreed and asked Castrodale to include that in the report.

Parker asked if it wouldn't be simpler in the report to say, *"...where there is no established building lot."* If there is not an established building lot that reduces the size of the larger acreages, there would need to be a way to measure. In his mind he thought that a point could be established on the center of the proposed structure and then go 100 feet in either direction to measure. He was not sure if he followed the language to get where they were going. What if the lot was 150 feet? You would still want to follow the rule that Tim originally proposed.

Williams replied that because the 50-foot setback was a fire safety issue the only place that it mattered was near the structure and the 50-foot setback should be measured near the structure. If she failed to accomplish that in her language she welcomed ideas of how to clarify that. It is only in the area where the structure is. If there is a deeper setback elsewhere it is not a problem.

Risch noted that it sounded like they were zoning for a particular place or structure or lot. That is spot zoning rather than letting something that is an anomaly, a one-of-a-kind, go through the variance process if it becomes important.

Lipton did not agree. He did not think it was a spot zone. There is a principle involved here.

Baskfield stated, I think that we are up against this because we are doing something that is never done in my experience, which is we are setting back from an irregular line, a straight line. If our illustration just copies the setback by 50 feet it doesn't matter how big the lot is.

Currin stated, I think Andy Mueller had it right. You get a thousand-acre parcel up there and you may have somewhere along that escarpment line, it could be half-a-mile, and that closest point, and you would want to put the house where you would have some views and where it is suitable to build a house. Because of the restriction of having to be 50 feet from that closest point, your house may have to be back a quarter-of-a-mile, 150 yards. This is too complex. An engineer needs to be involved and consider these larger parcels. I don't think we can figure this one out.

Lipton did not think that it was complicated at all. It's a very simple proposition. The person sets the house where they want to and you measure the setback 100 feet from each corner of the house to determine where the closest nick in the escarpment line is. So, we don't have a general rule that forces someone to put a house where they don't want it. It's a valid point and I don't think it's complicated at all. I think the wording is okay. I think the illustration needs to be refined to show how it works. I think we can put that in the accompanying comments.

MOTION: Williams moved to modify that *[the illustration]* to show how it would work on a larger lot.

SECOND: Parker seconded the motion.

VOTE: **A vote was taken and the motion passed 3 to 2. Currin and Risch voted in opposition.**

Lipton moved to Section 9.3.F.

There were no amendments.

Lipton asked if there were any amendments to Section 9.3.G.

There were no amendments.

Lipton asked if there were any amendments to Section 9.3.H.

There were no amendments.

Lipton asked if there were any amendments to Section 9.3.I.

There were no amendments.

Lipton asked if there were any amendments to Section 9.3.J.

There were no amendments.

Lipton asked if there were any amendments to Section 9.3.K.

There were no amendments.

Lipton asked if there were any amendments to Section 9.3.L.

There were no amendments.

Lipton asked if there were any amendments to Section 9.4.A.

There were no amendments.

Lipton asked if there were any amendments to Section 9.4.B.

There were no amendments.

Lipton asked if there were any amendments to Section 9.5.

Williams noted that this was discussed during the question period and that it was unchanged except that the Planning Commission added 9.5.C. The question came up as to whether the County would need to get outside consultants. It was her understanding when talking to Staff that that might only be necessary for PUDs.

MOTION: **Williams moved to revise the wording of the first sentence of Section 9.5.B. to read: *"The Planning Commission may, with prior approval of the Board of County Commissioners, seek qualified outside professional assistance during its PUD review process."***

SECOND: **Parker seconded the motion.**

VOTE: **A vote was taken and the motion passed 4 to 1. Currin voted in opposition.**

Lipton asked if there were any comments or amendments to Section 9.5.C.

There were no amendments.

Lipton asked if there were any amendments to Section 9.6 - Definitions.

Parker thought that they could go into the report and indicate that during the public comment period it was pointed out that the document was not consistent with the use of "ridge" and "ridgeline" throughout and suggest that that language needed to be cleaned up. "Ridge" is not separately defined while "ridgeline" is defined.

Lipton added that it was also used as one word and two.

Castrodale added that to the report.

Lipton asked if there were any amendments to Illustration C, Sections 9.6.S, 9.6.T, 9.6.U., and 9.6.V.

There were no amendments.

Lipton asked if there were any amendments to Section 9.8 – Covenants Relating to Visual Impact.

Williams thought that the report should indicate that the Planning Commission was not wedded to having this necessarily in Section 9 but if the BOCC thought it was appropriate to have a separate section, the Planning Commission was fine with that, too.

MOTION: Williams moved that the report indicate that Section 9.8 could be a separate, or a portion of a separate, section in the Land Use Code.

SECOND: Risch seconded the motion.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Case asked about the last sentence in Section 9.8. that referred to Section 7.3.G. He asked if it should be removed since there was no existing Section 7.3.G.

MOTION: Williams moved that the Planning Commission remove that sentence, the last sentence in Section 9.8, that is "*See Section 7.3.G. Alternate Energy Structures for additional building code requirements*" because there is no such section.

SECOND: Parker seconded the motion.

VOTE: A vote was taken and the motion passed 4 to 1. Currin voted in opposition.

Lipton stated that the Planning Commission had reached the point where they had completed all of the amendments. He asked for a vote on the underlying motion to approve the Draft and the additional report as amended.

Williams noted that she had some items that she wanted to talk about and some evidence that she wanted to put in, and it was not going to happen in eight minutes. She was not prepared to vote at this time. She wanted to talk about the reasons that she was supporting things and not.

Lipton suggested that the way it should work would be to take a roll call vote on the things that were approved and that would be when she could talk.

Williams stated that it would take her about 45 minutes.

Parker noted that the Planning Commission had never said that this would end at 10 p.m. It would run until they got it done. A discussion followed as to protocol and some confusion about when the Planning Commissioners' comments were to be made.

Williams understood the County Attorney to say that those comments would be made during the roll call.

Currin thought that the County Attorney had said to make the comments during deliberations, not just during the roll call vote.

Parker also had comments but he had written comments that he was prepared to submit. All of his written comments refer to specific documents that were already part of the record and he was prepared to offer those comments rather than go through it now.

Williams explained that, to her, this was part of the deliberations. She did not know what they would be deliberating on until she knew what the amendments were. To her it made sense to wait until the amendments to talk about what was going on, and she deliberately did not respond to some of the comments made by other Commissioners because she thought that this was the time, during the roll call vote, when they would have the opportunity to do that. She apologized if she was mistaken and offered to go quickly.

MOTION: Williams moved to recommend adoption of the Section 9 as included in our packet and as modified by the amendments tonight, plus the report.

SECOND: Parker seconded the motion.

Lipton called for a roll call vote.

Currin: Against.

I'm opposed to the BOCC being recommended to adopt the Visual Impact Regulations as we've gone through tonight.

Williams: For.

I was in business and you don't ever get perfect data; you get the best available data and I believe that's what we've done. The County Road data and analysis that was in the packet, we've all talked about how that was done. There were some statements that we deliberately refused to look at economic data. That is simply not true. At one point Staff brought in a spreadsheet that was looking at different costs in different areas of the county, and the conclusion was that that was not helpful data because it varied more by what you put in your house; did you put in Formica, or did you put in marble? Do you have a big house or a small house? Did you put in linoleum floors or expensive marble from Italy? So, we did try to do that. There were a number of times when members of the public and members of our Commission said that you need to talk about that more, you need more economic data. We tried to do that and they never brought us anything. No other criteria are presented as to a measurable, quantifiable way, although there were some ideas that were brought forth.

Topography has been mentioned over the last couple of years and we didn't specifically evaluate topography, and I know this was something that John was hoping to look at, but to me the similarities between the current visual impact corridors and the proposed visual roads are remarkable. So County Roads 8, 10, and 24 that are visual impact corridors, are in our valleys, and have almost indistinguishable topography and agricultural use as County Roads 10A, 12, and 12A, which we are proposing to add. County Roads 5 and 7, which are visual impact corridors, provide access to hiking trails in the San Juan Wilderness, and access to the mountain bike trail, the Dallas Trail, and that's just like County Road 9, which we're proposing to add. So, I don't think we're trying to do something funny or add roads that are not like roads that are already there. Highway 550, which is a current visual impact corridor, traverses a very steep canyon with a rich mining history, as do County Roads 361 and the several County Road 26s. The topography of our county is very varied, but no road is proposed for inclusion which is not extremely similar to a road that is already included.

We were responsive. People from Colona came and asked that they be exempt and there is an exemption for them.

I would like to put the minutes from the presentation of the local building design professionals to the BOCC and public at the work session on July 8, 2010 into the record. The members were Larry Coulter, Doug Macfarlane, John Peters, Randy Gardner and Larry Kumpost, who was later a member of the Planning Commission. This report included specific recommendations for revisions to the point system, most of which are incorporated into the proposed revisions. This held particular weight for me because these are the guys who are doing the building but it was before the whole thing became politicized. Their report recommended that we consider removal

of mitigation points for lot size since, quoting from the report, *"...it may not result in buildings being further from the road or less visible."* We've removed lot size. The report recommended additional review of natural screening to clarify effectiveness and define how it is measured. The proposed revisions clarify and simplify measurements to make it doable in the field, which is something that Staff requested, as well. The report recommended that blending be emphasized with the most points towards compliance. We make it mandatory but we don't specify specific colors. We have talked about the palette. Our architects were worried about trim colors; it's clear that we've allowed trim colors. The report recommended adjusting the available mitigation points for distance from the road. The proposed revisions increase the maximum mitigation points for distance from the road from 3 to 9. The report recommended review of additional screening to clarify effectiveness and define how to measure, and bonding of the property to ensure continued compliance. And what we did is we clarified how to measure and we encouraged xeriscaping to reduce the need for irrigation and, thus, bonding. The report included consideration of additional mitigation points for massing and varied rooflines. The proposed revisions include these recommendations in the form of mitigation points for apparent massing, in the form of reduced impact points for structures with varied rooflines. So, we did what they asked us to do. Those who said they could have done it in a couple of weeks and we ignored it, and all we needed to do was tweaks – we did what they asked us to do.

The report did reflect concern about adding roads, but they were worried about the additional burdens on Land Use Staff. We've already addressed that about how Section 18 of the Land Use Code requires that fees do cost recovering, so that's not going to be an issue.

There was a question about litigation. I'll address that.

Staff did a presentation visually demonstrating the actual change in visual impacts of structures within relatively short distances from the road. I have a copy of that and I would like that added to the record.

The presentation by the real estate professionals urged the retention of the setback, and we did that. And we listened to Mr. Mueller who was worried about big properties.

We've relied on the expertise of local architects, those on the Planning Commission now and those during the last two years, as well as Doug Macfarlane who has been there a lot. I have a copy of Larry Kumpost's presentation on the effectiveness of design elements to reduce visual impacts.

There's been a lot of concern about unbuildable lots. In April of 2012, the Planning Commission went on a field trip along roads that are in current visual impact corridors and about an equal number that are not. Three lots were initially identified as unbuildable on County Road 24, which is a visual impact corridor. Of those three, one is owned by the sister of a Planning Commission member. That Planning Commission member clarified that a home that meets visual impact regulations has already been designed. A beautiful home that meets visual impact regulations is being built on the second lot. And John Baskfield did a wonderful presentation on the third lot showing that there were several locations where a two-story home could be placed. I have a copy of John's presentation that I would like to enter into the record. I think the issue of unbuildable lots has been exaggerated. There's no evidence. In fact, where we were told that they were not buildable there is now evidence that they, in fact, are.

I'd like to include the analysis of all new construction of homes and garages from January 2009 to December 2012. We did a field trip on April 18, 2012. I'd like a copy of that in the record. And, finally, I would like to say that no structures can be made non-conforming if there's not a structure there in the first place. The longer we wait, the more potential there is for structures that potentially could become non-conforming.

History of variance requests and outcomes... I have a copy of that document; there have been four in fifteen years. That tells me there's not a big problem with 100 miles of road so I don't think it's gonna be with more.

Property value data from the County Assessor... there's been a lot of talk about how property values are going to plummet. In fact, all the actual data from our County Assessor would suggest otherwise. There are two files: Land Sales 2004 to 2012, and the top 100 assessed data plus the status of the top 100 most expensive homes in Ouray County. Eighty-two of them are in visual impact corridors. So, that would tell me that being in a visual impact corridor certainly doesn't decrease values.

On the issue of litigation... there's been a whole bunch of that coming up. Of course, we have a responsibility to think about that. We don't want to pass or recommend adoption of litigation of stuff that's going to be subject to litigation or losing a lawsuit. There's a lot of documentation that has led me to be confident that these proposed revisions meet a standard of very, very low risk of a lawsuit and high probability of winning a lawsuit, although, as Randy said, anybody can file one.

First, in the minutes for the Ouray County Planning Commission regular meeting on November 19, 1996, page 2, when Mike Hockersmith was the County Attorney and Ron Bell was the County Administrator, and gave an overview of the now current Section 9 that quote "*Money was allocated to hire technical expertise to support the Planning Commission for doing the visual impact study. The County chose Design Workshop of Aspen. They had worked with the County several years ago on a visual impact case that went to litigation.*" So, the basic format and content of the current Section 9 had significant input from experienced consultants familiar with litigation, as well as the then County Attorney, and it passed their muster. Former County Attorney and now Judge, Mary Deganhart, wrote a memo to the Planning Commission on the issue of takings. It was brief and to the point. One highlight: "*Landowners cannot establish a takings claim simply by showing that they had been denied the ability to exploit a property interest that they heretofore had believed was available for development. The conclusion states that the Board is vested with authority to regulate land use in Ouray County, and visual impact has been regulated in Ouray County for 25 years. Based on the current state of the law on regulatory takings, I believe it is unlikely that a successful inverse condemnation claim would be sustained against Ouray County based upon an expansion of the application of visual impact regulations.*" The provisions of Section 9 that we have modified or tweaked do not constitute a takings according to Ms. Deganhart. There's also a takings law in plain English, which I think we got from Mary. "*Courts have upheld a wide variety of purposes as valid reasons for enacting environmental and land use regulations including pollution prevention, resource protection, historic preservation, design controls, and scenic view protection.*" I would like that in the record.

I also looked at the BOCC's survey that was done in May of 2010, and that was done at a public hearing and anybody could go on the website to do it. What's so interesting is that the large majority of respondents supported the following:

> "*Achieving the goals, objectives, and policies stated in the Master Plan to "maintain strong visual impact regulations to protect significant and sensitive areas.*" (87%)
>
> "*Minimizing visual impact of individual structures to require blending with the natural environment*" (84.9%)
>
> "*Expanding visual impact corridors consistently and equally throughout the county*" (72.2%)

I want to talk about the things that are not in these revisions. There has been a suggestion that we should map our ridges and I have a photo of the ridge line map from the Theobald Study. There are green lines everywhere. The County does not

have money or the resources to go out and map significant ridges. It just isn't there. And with only four variances now granted in 16 years, it just doesn't seem to me to be worth it; the variance thing is working.

It's really a shame that this has become so divisive, and I don't really understand why because we've listened to the builders, we've listened to the real estate. This represents a compromise as did the original Section 9 and the 1997 revision. The sky didn't fall when those two were adopted, and I don't think it's gonna fall if these revisions are adopted. We have listened to everybody. We all want to protect the scenic views.

This is a compromise. I didn't get what I wanted. I'd be willing to bet that if you asked every single one of us, we all didn't get what we wanted. We tried to listen to each other, we looked at what was going on, we offered compromises, and I think it's not perfect, but it's better than what we have, and it's going to protect us for the future, and I would vote in favor.

Parker: For.

What were we asked to do? The BOCC resolution asked us to review their draft, the current Section 9, and to deliberate on twelve specific topics. We did it. We prepared a document that Sheelagh is indicating is a compromise document. I did not have any preconceived ideas when I joined the Planning Commission about what the final document would look like. I did believe that we would need to compromise in order to be able to try to achieve as broad a consensus as possible. I think some of the compromise that I proposed didn't sit well with some of the people on the Planning Commission. Other times, the documents... the compromise I proposed was either not broad enough or was too broad. But, I think the bottom line here is we have a document that I believe addresses the concerns that we were asked to address and is the best work product that we can do now. There's no way, in my understanding of where we are, that the BOCC gets to weigh in on this unless we forward a recommendation to them. I agree, this is not a perfect document but, as one of the speakers at the February 26 hearing said, we can't wait for perfect. We need to go forward now with what we have. I submit, I have a written document explaining why it is that I am voting to support this and listing the documents that I want to make sure are part of the record. I think that most of those documents were referred to in what Sheelagh has but I would like, if you don't have copies to forward on to the BOCC of the documents that I refer to, let me know and I will make you copies. I don't think you want a stack of two inches of paper from me based upon what we've already done. I am offering this as the reason for my vote and will provide a copy to Bryan. And, yes, I vote that this move forward to the BOCC.

Risch: For.

I vote yes even though there are parts I disagree with. And, I would suggest that the best reliance we have at this point is on the record of our two plus years of deliberations.

Lipton: For.

I would like to thank all of my colleagues on the Board for a lot of years of really good work. We gave it the best we could and I think we made honest choices. I vote for moving this forward to the BOCC as amended along with the report.

Lipton: That concludes the vote of four for and one against.

VOTE: The motion passed 4 to 1. Currin voted in opposition.

Lipton: I will take a motion to adjourn the meeting.

MOTION: Parker moved to adjourn at 10:16 p.m.

SECOND: Williams seconded the motion.

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

The meeting was adjourned at 10:16 p.m.

Respectfully submitted by:

Linda Munson-Haley

Approved by:

Sheelagh Williams

Sheelagh Williams
Vice-Chairman