The Board of County Commissioners met in regular session on January 25, 2022. Those present for the session were Lynn M. Padgett, Chair; Jake Niece, Vice-Chair; Ben Tisdel, Commissioner Member; Connie Hunt, County Administrator; Leo Caselli, County Attorney; and Hannah Hollenbeck, Deputy Clerk of the Board.

- Note – This meeting was recorded for reference purposes.

A. 9:00 The Board of County Commissioners convened as the Board of Health concerning the following:

1. Public Health Director Update:

Tanner Kingery, County Public Health Director, was present.

Kingery updated the Board on vaccine clinics and availability, regional and local case data, and variants. Kingery highlighted that the Public Health Department was administering approximately 70 tests per day; but noted that testing demand had waned a bit since the end of December and early January.

Hunt and Kingery reported on distribution of masks to community locations. At-home test kits would also be provided when supplies were available.

Kingery read an update email from Public Health Department Medical Officer Dr. Andrew Yeowell.

The Board discussed the need for a mask requirement. The Board agreed to discuss with City of Ouray and Town of Ridgway Council Members during a joint work session on January 27, 2022.

B. 10:03 Call to the Public:

The “Call to the Public” agenda item is a time when the public may bring forth items of interest or concern. No formal action may be taken on these items during this time due to the open meeting law provision; however, they may be placed on a future posted agenda if action is required.

There were no Call to the Public items.

C. 10:03 The Board of County Commissioners convened as the Board of Social Services to consider the following items:

Carol Friedrich, County Social Services Director, was present.

1. Request for approval of the following reports and authorization of the Chair’s signature on certification page:
   a. Balance Sheet, October 2021 and November 2021:
   b. Earned Revenue and Expenditures, October 2021 and November 2021:
   c. Expenditures through Electronic Benefit Transfers, November 2021 and December 2021:
   d. Check Register for the Month of November 2021 and December 2021:
   e. County Allocation / MOE Report, OCT-22 and NOV-22:

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to approve the Balance Sheet, October 2021 and November 2021; Earned Revenue and Expenditures, October 2021 and November 2021; Expenditures through Electronic Benefit Transfers, November 2021 and December 2021; Check Register for the Month of November 2021 and December 2021; County Allocation / MOE Report, OCT-22 and NOV-22, and authorized Chair’s signature on the certification page. The motion carried unanimously.

2. Caseload Report:

Friedrich reviewed the caseload report.

3. Request for approval and authorization of Chair’s signature on a Contract for Legal Services with Hockersmith Law and Whitmore, LLC for Child Welfare related legal services and on the Fiscal Impact Form:

Commissioner Padgett said that there was no termination clause. Caselli said that he would be working to implement a standard set of contracts and agreements. The Board agreed that no changes were necessary.

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to approve and authorize Chair’s signature on a Contract for Legal Services with Hockersmith Law and Whitmore, LLC for Child Welfare related legal services. The motion carried unanimously.

4. Request for approval and authorization of Chair’s signature on a Colorado Department of Human Services Certification of Compliance County Merit System Year 2022 and on the Fiscal Impact Form:

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to approve and authorize Chair’s signature on a Colorado Department of Human Services Certification of Compliance County Merit System Year 2022. The motion carried unanimously.

5. Request for approval and authorization of Chair’s signature on a Contract for Core Services with Overall Wellness LLC for Child Welfare related services and on the Fiscal Impact Form:
Friedrich explained that it was a new provider, but that the contract was the same as other Core Services contracts.

Friedrich requested that the "not-to-exceed" amount listed on the Fiscal Impact Form be corrected to $5,250.00.

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to approve and authorize Chair’s signature on Purchase of Service Agreement with Overall Wellness LLC for Intensive Family Therapy / Mental Health Services and on the Fiscal Impact Form, as corrected. The motion carried unanimously.

6. Request for approval and authorization of Chair’s signature on Child Support Services Purchase of Services Intergovernmental Agreement 2022 with Montrose County and on the Fiscal Impact Form:

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to approve and authorize Chair’s signature on Child Support Services Purchase of Services Intergovernmental Agreement 2022 with Montrose County and on the Fiscal Impact Form. The motion carried unanimously.

7. Discussion about County Engagement in Early Childhood Activities:

Friedrich reported on ongoing discussions regarding Early Childhood capacity and access to services. Friedrich said that she was working with Bright Futures and other area providers to develop a survey to determine community need.

10:44 Break:

D. 10:50 General Business:

1. Request for approval of warrants:

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to approve the warrants as presented. The motion carried unanimously.

2. Request for approval and authorization of Commissioner’s signatures on letter regarding United States Forest Service (USFS) Grand Mesa, Uncompahgre, and Gunnison National Forest Baldy Mountain Landscape Resiliency and Habitat Improvement Project:

The Board discussed and agreed to minor revisions.

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to approve and authorize Commissioner’s signature on letter regarding United States Forest Service (USFS) Grand Mesa, Uncompahgre, and Gunnison National Forest Baldy Mountain Landscape Resiliency and Habitat Improvement Project, as amended. The motion carried unanimously.

3. Request for approval and authorization of Chair’s signature on a First Amendment to Professional Services Agreement for Medical Officer for Ouray County Public Health – 2022 and on the Fiscal Impact Form:

M/S/P – Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to approve and authorize Chair’s signature on a First Amendment to Professional Services Agreement for Medical Officer for Ouray County Public Health – 2022 and on the Fiscal Impact Form. The motion carried unanimously.

4. Request for adoption of Resolution 2022-004 Amending the Fair Board Bylaws:

The Board discussed minor amendments. The Board agreed that agendas and minutes would be available on the Ouray County Website.

M/S/P – Motion was made by Commissioner Padgett and seconded by Commissioner Niece to adopt Resolution 2022-004 Amending the Fair Board Bylaws, as amended. The motion carried unanimously.

5. Request for approval and authorization of Commissioner’s signatures on Highway Users Tax Fund (HUTF) Report:

Jeff Bockes, County IT / GIS Manager, was present.
Bockes indicated there were no changes to the report from the previous year.

M/S/P – Motion was made by Commissioner Niece and seconded by Commissioner Tisdel to approve and authorize Commissioner’s signature on Highway Users Tax Fund (HUTF) Report as presented. The motion carried unanimously.

6. Request for appointment of one member to the Ouray County Fair Board:

Erin Stadelman, County Fairgrounds Manager, was present.
Stadelman said that the Fair Board would be considering the removal of one member due to non-attendance at their next meeting.

M/S/P – Motion was made by Commissioner Niece and seconded by Commissioner Padgett to appoint Tate Rogers for a term to expire on February 1, 2024. The motion carried unanimously.

8. Request for approval of the August 31, 2021 minutes:
M/S/P – Motion was made by Commissioner Niece and seconded by Commissioner Tisdel to approve the August 31, 2021 minutes as presented. The motion carried unanimously.

E. 11:26 Trust for Land Restoration:

1. Request for approval and authorization of Chair's signature on History Colorado State Historic Fund Online Application Form for Ouray County's Grant Application to the State Historic Fund for the Idarado Houses Restoration Project:

Pat Willits and Rachel Griego, Trust for Land Restoration (TLR), were present.

Willits reported that TLR had fundraised approximately $15,000 of the $35,000 grant match. He said that, pending the Board's approval, he would submit the application on February 1, 2022.

M/S/P – Motion was made by Commissioner Niece and seconded by Commissioner Tisdel to approve and authorize Chair's signature on History Colorado State Historic Fund Online Application for Ouray County's Grant Application to the State Historic Fund for the Idarado Houses Restoration Project. The motion carried unanimously.

D. 11:30 General Business:

9. Request for adoption of Resolution 2022-005 Amending the Number of Active Eligible Electors Per Precinct:

M/S/P – Motion was made by Commissioner Niece and seconded by Commissioner Tisdel to adopt Resolution 2022-005 Amending the Number of Active Eligible Electors Per Precinct. The motion carried unanimously.

10. Review and Discussion of identifying a unified Ouray County position on Rep. Shannon Bird's Draft Bill Text Concerning "The Property Tax Classification of Short-Term Rental Units":

Susie Mayfield, County Assessor, was present.

The Board had a discussion pertaining to the question of short-term rental units having a commercial tax assessment rate, and if there should be a requirement for information disclosure.

The Board and Mayfield agreed that the bill was supportable as long as:

- The bill was supportable only if online platform transparency was required;
- Tax assessment rate equity among the different lodging categories;
- Owner-occupied primary residences used for short-term rentals were exempted from the commercial tax assessment rate; and,
- Any long-term or primary residence not used as short-term rental for more than 90 days retained the residential assessment rate.

The Board and Mayfield opposed:

- Exemption of secondary residence short-term rentals from the commercial assessment rate; and
- General opposition to Rep. Bird's December 9, 2021 draft bill unless amended. Amendments would, at a minimum, need to address the Denver County Assessor’s questions and concerns.

12:23 Lunch:

G. 1:31 Public Hearing – Land Use Code Amendment:

1. The purpose of this hearing is to review a recommendation from the Planning Commission and Land Use Staff regarding proposed changes to the Land Use Code, Section 16 – Wildfire Mitigation Regulations to simplify the administration of the regulations and eliminate unintended consequences:

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

Commissioner Padgett opened the hearing and explained the procedures. Commissioner Padgett invited Staff to make a presentation.

Staff Presentation

Castrodale explained that certain issues and unintended consequences had been identified by staff as needing correction. He said that the point system was too complicated and became a significant burden on staff's time. Additionally, current regulations allowed for combustible siding in connection with the completion of defensible space (d-space); however, staff found that homeowners often struggled to complete the required d-space requirements due to the State's recommendation to not cut trees during the summer months. He said that it often resulted in a delay in issuance of a certificate of occupancy (CO). Furthermore, limiting the entity that developed d-space plans and evaluations only to West Region Wildfire Council (WRWC) also resulted in delays in issuance of COs. Castrodale said there were additional hardships for the homeowner converting the construction loan to a conventional loan without a CO.

Castrodale explained that the revisions included removing the bulk of the scored elements for single family dwellings. Additionally, if a homeowner selected combustible siding for the structure, completion of d-space was required and a $1,000 refundable fee. Castrodale said that the Board needed to determine if the fee amount was adequate. Castrodale
said that the original intent of the regulations remained, but allowed Land Use staff to issue a CO, even if the d-space wasn’t completed. He said that the fee was intended to incentivize homeowners to complete the d-space, but that it would not hold up the issuance of the CO.

Castrodale highlighted the removal of confusing language, clarified the requirements for additions of greater than 500 square feet, and the inclusion of the fencing requirements that were accidentally omitted from the regulations. Castrodale said that the revisions made it abundantly clear that a property owner was only responsible for d-space on their property.

Castrodale reiterated that the revisions were intended to strengthen the regulations and to make them more user-friendly for staff and property owners. He said that the revised regulations were strong, progressive building regulations that would not result in conflicts or delays. Castrodale said that Planning Commission unanimously recommended adoption of the revised regulations.

Commissioner Questions on Staff’s Presentation.

Commissioner Tisdel said that there was a seasonal restriction on cutting of pinon trees due to the lps bark beetle. He asked if there was other vegetation that had cutting restrictions. Castrodale said that he was only aware of the restriction on pinon trees.

Jamie Gomez, WRWC Executive Director, clarified that there were a number of beetles that affected various trees in Ouray County, but CSFS restricted the time of year that the pinon tree could be cut. Gomez noted the majority of new construction in the County occurred on Log Hill Mesa, which was pinon territory. Commissioner Tisdel agreed that the delay between the completion of construction and completion of d-space was an issue and justified the revision recommendation.

Commissioner Padgett asked Gomez the dates of the no-cut edict for pinon trees. Gomez replied that CSFS restricted cutting pinon from October 15 - April 15; he said that other trees and d-space projects could be done within that timeframe.

Commissioner Tisdel asked if WRWC was involved in the revisions. Castrodale said that Gomez reviewed the document in September. He said that the draft revisions had not been reviewed by CSFS.

Castrodale said that staff had taken a pragmatic approach to solve issues with Section 16. He said that staff felt confident that wildfire science was and remained the substance of the regulations.

Commissioner Padgett asked if the fire departments in the County had been consulted about the revisions. She noted there no public comment had been received. Castrodale said that the substance of the regulations remained the same, but the processes were improved by the revisions.

Commissioner Padgett asked if any consideration as given to commercial lodging units. Castrodale said that staff and the Planning Commission had significant discussions regarding commercial units but came to the conclusion that the International Building Code (IBC) addressed items like sprinklers for commercial units, and that they did not need to be included in Section 16 of the Land Use Code. Commissioner Padgett said that she would have more comments on commercial units in deliberation – she noted that fire did not discriminate in type of dwelling units.

Commissioner Padgett asked why the creation of d-space would not be considered as part of site preparation prior to the start of construction. Castrodale wasn’t sure. He said that single family dwelling unit construction was typically completed in 12 to 18 months but that the current regulations did not consider a project complete until the d-space had been done; he said that it was causing issues with banks and issuing COs.

Commissioner Padgett asked Castrodale to explain the fencing elements. Castrodale explained that it had been accidentally omitted from the current regulations, but the proposed revisions reinserted the provisions. He said that fences attached to the home must be of an ignition-resistant material, and that the hardened zone extend five feet from the fence perimeter. He said that both B5.2 a) and b) were required to be completed.

Commissioner Padgett asked if the $1,000 bond was adequate. Castrodale said that it was a placeholder amount identified by staff. It was his opinion that the amount needed to be significant to incentivize homeowners to complete the d-space and to want the refund.

Commissioner Padgett asked how many homes constructed under the current regulations needed an extension or exemption for d-space. Castrodale estimated it to be approximately 40% of homes. Sampson clarified that the Section 16 regulations had been adopted and enacted in 2020, meaning that homes that were permitted in the spring of 2020 were just wrapping up construction. He said that there had been five or six homeowners that had encountered delays in obtaining COs; he anticipated that it would continue to be an issue, if not addressed by the proposed revisions.

Commissioner Tisdel asked for more information about the change to the driveway standards. He asked if the driveway standards would apply to new construction if the previous structure had been legal non-conforming and was demolished or burned down. Castrodale said that he would need to think through the scenario, given the issue of conformance.

Commissioner Padgett said that it would be problematic; she said that it would result in numerous exemption requests if there was no needed access right for parcels. She used Wisteria Lane as an example where there would be numerous issues.

Commissioner Tisdel said that d-space was generally completed post-construction, as it was helpful for the person doing the site inspection to have the benefit of seeing the completed structure. He asked if it would be motivating for the County to have a Firewise Certification program attesting that the structure was built to recognized regulations. Gomez said that WRWC had been reviewing programs that offered certifications, but noted that it was a significant process. He was unsure if the certification was a sufficient incentive.
Commissioner Padgett asked why the items in Section B9 of the worksheet were proposed to be changed from "required" to "educational". Castrodale explained that the only way for them to stay as required was to implement another point system. He reiterated that the point system had been very complicated for applicants to understand and for staff to administer.

There were no further clarification questions from the Commissioners. Commissioner Padgett opened the public comment portion of the hearing.

Public Comment

Patsy Miller, Ridgway resident and County Planning Commission Member, said that she was commenting as a private citizen and not as a member of the Planning Commission. Miller cited her professional research in climate change and the contributions of human-caused impacts on the climate. She said that number of homes constructed in the wildland urban area had increased, and the way public lands were managed had also changed, resulting in a dense forest that contributed to the proliferation of mega-fires. Miller said fire science had documented that radiant heat and long-distance transportation of embers reaching buildings long before the fire. She said that this science was a key point for d-space.

Miller said that the changes to the regulations had been recommended by Planning Commissioner had been made based on the best available science. Miller said that Section 2.8 should be changed to require that the exterior siding to be ignition-resistant, and that d-space should extend 100 feet from the structure, or to the edge of the property boundary. Miller asserted that allowing combustible siding did a disservice to the regulations. It was Miller's hope that the Board would not leave a weak link in the otherwise sound regulations that would protect homes and the County. Additionally, Miller thought that requiring the completion of d-space during construction was a good idea.

Jamie Gomez, Ridgway Resident and WRWC Executive Director, recognized the work of staff, the Planning Commission, and WRWC for Section 16. Regarding a question Commissioner Padgett had about the applicability of Section 16 to commercial buildings, he agreed with staff that the IBC addressed more fire planning and hardening for commercial buildings. He agreed with Miller's point about ignition-resistant siding; however, recognized that it was a point of disagreement and the proposed revisions were a good compromise in requiring d-space if combustible siding was selected. Gomez applauded staff in striving to develop regulations that protected communities from wildfire impacts, but also recognized staff's capacity to enforce the regulations.

Gomez said that performing d-space prior to the construction of a home was impractical as building plans and other factors changed. He said that completing the d-space after the construction of the home gave the best chance for the d-space to be done effectively. Gomez noted that d-space was not the same as landscaping.

Gomez agreed with Castrodale that the $1,000 bond was insufficient. He suggested a percentage of the home's value was more equitable for the bond amount, as well as being a good incentive to complete the d-space. Gomez noted that d-space was an effective tool not only in wildfire mitigation, but also as vegetation management and for forest health.

David Beckhardt, County Road 22A resident, agreed with Commissioner Padgett's concerns about commercial buildings. He supported the application of the proposed Code section to commercial buildings; he did not think that the IBC adequately addressed fire hardening for commercial buildings.

Hearing no other public comment, Commissioner Padgett closed the public comment portion of the hearing.

Commissioner Deliberation

Commissioner Padgett asked if the Board felt that it had the requisite information to make an informed decision, or if more information was needed. Commissioner Tisdel said that there had been lots of new information since the Marshall Fire in Boulder County in late December 2021, but that he accepted Staff's conclusion that the proposed revisions were enforceable and effective. Commissioner Niece did not think that the Board needed additional information. Commissioner Padgett did not feel that she had as much information as she wanted to understand the purpose and need for the revisions. She said that more information was needed from mortgage companies. She questioned if the Board would be putting first responders in jeopardy by not fully understanding the consequences of the proposed revisions.

Commissioner Niece said that a bond amount that equated to 1% of the valuation of the home was a good idea. Commissioner Padgett said that it would be easier to determine if she had more data; she asked if the applicants could sign an affidavit requiring d-space completion within a set timeframe. She did not want to legislate for the minority and weaken the section.

Castrodale reframed the discussion: he said the root of the issue was the point system associated with the Code section. He said that the bulk of the issues with Section 16 was from the point system. He said that the amount of time staff was spending explaining and walking people through the regulations was not sustainable.

Commissioner Niece asked if a definition of "non-combustible" and the classes could be added. Castrodale was hesitant to include it, due to the variety of types of siding. He said that the Code section, as proposed would allow for contractors to come to Land Use with new technologies. Commissioner Tisdel agreed that a general definition may be helpful.

Commissioner Tisdel said his preference for the bond was a percentage of the valuation to be collected at the time of issuance of the building permit. Caselli said that the Planning Commission had discussed the bond issue extensively. He said that some members had expressed concerns about having the d-space tied to an affidavit that would be recorded, as it would affect the title status. Caselli agreed that a percentage of the building permit fee would not be a substantial change from the intent.

Commissioner Padgett suggested that along with the bond collected, the property owner sign a statement recognizing that d-space was included on the CO checklist and that the County may grant a 6-12 month extension for good cause shown. Caselli said that Commissioner Padgett's suggestion would be a substantial change from the recommendation from Planning Commission and that it would need to go back to them for consideration. Commissioner Padgett responded that the Board had the ability to accept, reject, or accept with revisions the recommendation of the Planning Commission.

Caselli said that the proposed affidavit would be used in civil enforcement, and that penalties were very high for that
Commissioner Padgett clarified that she was simply proposing a signed statement when the bond was collected putting the owner or agent on notice that d-space was included in the CO checklist. Commissioner Niece said that Commissioner Padgett was talking about policy and culture, while Caselli was coming at it from a legal perspective. He said that the Board should encourage a culture where d-space was part of the culture of new construction. Caselli said that the proposal was still a substantial change. He said that adding that level of complexity would make his job more difficult in terms of code enforcement. Commissioner Tisdel said the goal was to achieve a good Code that made it possible to get a CO and to complete d-space. He did not want to delay implementation by sending it back to Planning Commission.

Commissioner Padgett asked for clarification to when d-space was required. Castrodale interjected that a definition of "ignition resistant" siding would be added to Section 2 of the Land Use Code.

Commissioner Padgett said that the amended Code removed the d-space incentive. She emphasized that d-space was necessary for all areas of the County. She said that if the County was going to allow combustible siding, County staff should ensure realistic and effective d-space.

Castrodale said that Section A2.0 of the Worksheet stipulated that if a residence had combustible siding, d-space was required. He said that if the Board wanted to require that all new single-family dwelling units be subject to completion of d-space, it would need to be re-reviewed by Planning Commission. Commissioner Tisdel appreciated that the proposed Code section had a strong emphasis on structure hardening. He appreciated Commissioner Padgett's questions, but he was hesitant to have Planning Commission review changes, given the upcoming construction season. Commissioner Niece agreed. He was encouraged that the culture was improving in terms of wildfire mitigation and d-space implementation.

The Board agreed to change the refundable fee from $1,000 to 1% of the valuation of the home, payable at the time of building permit.

The Board discussed the driveway provision. Caselli said that it may be more appropriate to include it in the Emergency Operations Plan (EOP).

M/S/IP - Motion was made by Commissioner Tisdel and seconded by Commissioner Niece to accept the recommendation from the Planning Commission and Land Use Staff regarding proposed changes to the Land Use Code, Section 16 - Wildfire Mitigation Regulations to simplify the administration of the regulations and eliminate unintended consequences, with the changes as discussed, and minor typographical and reference corrections.

Discussion:
Commissioner Tisdel stated that if there were reasons to further revise the section, staff should flag them and bring it to the Board for discussion and direction.

A roll call vote was taken on the motion with the following results:
Commissioner Tisdel voted in the affirmative.
Commissioner Padgett voted in the affirmative.
Commissioner Niece voted in the affirmative.

There was some discussion. Motion passed unanimously.

After the motion carried, Commissioner Padgett requested that staff come back to the Board in a year and provide an update to how administration was working, how many permits had been processed, and how many went with non-combustible siding. Additionally, staff should present any issues with legal, non-conforming driveways and suggestions of how to encourage d-space. She said that staff should also consider if commercial structures should be added to the Code section as well.

Commissioner Padgett closed the public hearing.

F. 4:08 Commissioner/Administrative Reports:
Commissioner Tisdel discussed the following:

1) Scheduling review

D. 4:17 General Business:

1. Review and Discussion of identifying a unified Ouray County position on Rep. Shannon Bird’s Draft Bill Text Concerning “The Property Tax Classification of Short-Term Rental Units”:

Hunt displayed the document developed summarizing the points agreed to earlier in the meeting.

M/S/IP - Motion was made by Commissioner Padgett and seconded by Commissioner Niece to approve the comments as discussed, and delegated authority to Hunt to make minor amendments and send the comments as the official County position on the Draft Bill Text Concerning “The Property Tax Classification of Short-Term Rental Units.” The action would ratified at future meeting.

F. 4:33 Commissioner/Administrative Reports:
Commissioner Niece discussed the following:

1) Tri County Water Water and Land Committee - Commissioner Niece provided an update on Committee and the goal to become a resource for governments and other organizations for water planning.
The Board of County Commissioners adjourned the regular session.

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Lynn M. Padgett, Chair

Jake Niece, Vice-Chair

Ben Tisdel, Commissioner Member

Michelle Nauer, Clerk and Recorder

By: Hannah Hollenbeck, Deputy Clerk of the Board