Michelle Nauer, Clerk & Recorder
Ouray County, CO
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The Board of County Commissioners met in regular session on June 23, 2020. Those present for the session were, Don Batchelder, Chair; Ben Tisdel, Vice-Chair; John E. Peters, Commissioner Member; Connie Hunt, County Administrator; Carol Viner, County Attorney; and Hannah Hollenbeck, Deputy Clerk of the Board.

- **Note – This meeting was recorded for reference purposes. The meeting was conducted virtually and in person pursuant to Resolution 2020-007 Setting Forth a Virtual Meeting Policy During a Local Disaster Emergency.**

A. 9:00 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.

Broadband Project

Robert McGowen, County Road 22 resident, brought to the attention of the Board that the County's contractor for the Broadband Phase 1 Project had not been compacting the soil correctly after installing conduit in the road shoulder. The Board directed Hunt to pass along the concern to the Road and Bridge department.

D. 9:04 General Business:

1. Request for approval of warrants:

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve the warrants as presented.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

2. Request for approval and authorization of Chair's signature on High Pines Villas Cluster Lot V611, a Plat Amendment of Lot V611 Fairway Pines Estates Village 6A as approved by Resolution 2020-017:

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on High Pines Villas Cluster Lot V611, a Plat Amendment of Lot V611 Fairways Pines Estates Village 6A approved by Resolution 2020-017.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

3. Request for approval and authorization of Chair's signature on State and Local Government lease Agreement for Treasurer's Office Xerox Machine with Xerox Financial Services, Cost Per Print Agreement with Professional Document Solutions, Inc., and on the Fiscal Impact Form:

Hunt explained that the expense had not been appropriated in the 2020 Budget; however, the expense could be covered given savings from an unfilled position.

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on State and Local Government Lease Agreement for Treasurer's Office Xerox Machine with Xerox Financial Services, Cost Per Print Agreement with Professional Document Solutions, Inc. and on the Fiscal Impact Form.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

4. Request for adoption of <u>Resolution 2020-019</u> approving a Surplus Property Declaration concerning obsolete, unusable, and inoperable Information Technology (IT) items:

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to adopt Resolution 2020-019 approving a Surplus Property Declaration concerning, obsolete, unusable, and inoperable Information Technology (IT) items.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.

Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

5. Request for adoption of Resolution 2020-020 setting forth a Plan for Safe Reopening of Public Facilities:

The Board discussed adding an expiration date. After a discussion, the Board agreed to the following amendment to Condition 6 in the "now therefore" section: *"The 'Safe Reopening Plan' may be temporarily rescinded or modified for a period not to exceed thirty (30) days by motion and approval of the Board of County Commissioners."*

Hunt proposed that the Courtroom BOCC meetings capacity be limited to 40 patrons, the Event Center Large rooms be limited to 50 patrons, and Event Center small meeting rooms limited to 10 patrons. The Board agreed.

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to adopt Resolution 2020-020 setting forth a Plan for Safe Reopening of Public Facilities.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

6. Discussion and direction regarding Dave Wood Road work and the estimated cost:

Bill "Frowny" Frownfelter, Interim Road and Bridge Superintendent, was present.

Frownfelter explained that Montrose County recommended that the Ouray County portion of road to be graded and re-graveled. Montrose County estimated that it would cost approximately $100,000 to complete the full seven miles of road; Frownfelter proposed that the Board consider graveling and grading the worst three-to-four mile section of road for an estimated cost of $50,000 to $60,000. Frownfelter said that the annual memorandum of understanding with Montrose County for maintenance of the road authorized an expense of up to $34,000. He felt confident that remaining amount could be addressed within the department's appropriated materials budget.

The Board agreed to Frownfelter's recommendation.

7. Request for award of Grader and Excavator and Proposals:

Hunt said that she would solicit governmental lease purchase financing options.

Frownfelter said that the grader was desperately needed as the old grader was currently unusable and need $25,000 worth of repairs.

After a brief discussion the Board agreed to wait to award the excavator proposal.

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to award proposal to Wagner Equipment for a Caterpillar 140 Motor Grader in the amount of $278,287.00.*

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

B. 9:38 The Board of County Commissioners convened as the Local Licensing Authority (LLA) concerning the following Marijuana Cultivation Facility request:

Applicant: **MS Support**

Location: **255 Melody Lane**

Application: **Major Modification of Premises to an existing marijuana cultivation facility**

Purpose: **Applicant seeks approval to expand the facility, by adding a 5,000 square foot greenhouse and the placement of six (6) conex boxes (storage containers).**

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

Commissioner Batchelder explained that the item under consideration was not a public hearing; however, the LLA would conduct it as such. He explained the procedures. Commissioner Batchelder requested that public comment be limited to the application and the provisions of Ordinance 2019-01.

Sampson explained that the request was to expand the existing cultivation area by 5,000 square feet and to utilize six conex boxes or shipping containers for the purpose of drying and storage. He noted that the shipping containers did not require a permit. Sampson provided an overview of the cultivation facility history, and explained that the property had held a marijuana cultivation permit since 2016. He continued to explain that the facility currently had six full-time employees: three lived onsite. The property was served by Tri County Water and San Miguel Power Association, and both utility servicers had provided

will-serve letters. Sampson noted that the current sewage disposal practice utilized for the cultivation facility may not be in compliance as cultivation water was not supposed to enter a permitted septic system. He said that upon notification from the Environmental Protection Association (EPA) , the drains in the cultivation area were closed and the applicants were working with the EPA to install a class 5 injection well. Sampson noted that a condition of approval had been recommended to address the draining issue. Sampson said that the applicants had addressed impacts to adjacent property owners by implementing screening in the form of a tree-topped berm and camo netting, in addition to odor and noise mitigation.

Sampson stated that it was the determination of staff that the applicant had provided all requested application forms, narrative, and paid the appropriate fees. If approved by the LLA, staff recommended seven conditions as included in the staff report be imposed.

Commissioner Batchelder invited the LLA to ask clarification questions.

Commissioner Peters asked a clarifying question regarding the average daily vehicle trips (ADT). Sampson said that fourteen ADTs were used as the standard for a residence, and that the same limitation was expected for cultivation facilities. He said that a carpool system had been utilized for employees not living on site and that the ADTs for the facility were well below fourteen.

Commission Tisdel referenced the email chain with a representative from the EPA regarding drainage. He was confused as the federal government did not recognize the legal cultivation or use of marijuana. Sampson said that the EPA regulated discharge water and ground water, regardless of whether the facility was cultivating marijuana or tomatoes. He said that Condition 7 required the applicant to comply with all EPA regulations regarding discharge water from a cultivation facility.

Commissioner Peters inquired to know the size of the existing cultivation facility. Stuart Knight, Authorized Agent for MS Support, replied that the existing facility was 3,330 square feet. Commissioner Peters clarified the size of the proposed cultivation facility. Sampson said that the applicant was requesting an additional 5,000 square foot facility to be placed on an existing 10,000 square foot concrete slab. Sampson said that the existing slab had been permitted as a general purpose greenhouse.

Commissioner Batchelder said that the existing general purpose greenhouse was allowed pursuant to the use-by-right for the zone. Sampson affirmed that Commissioner Batchelder was correct. Commissioner Batchelder said that the LLA would not be considering approval of the 10,000 square foot greenhouse normally; the reason for review was the applicant's desire to cultivate marijuana in 5,000 square feet of the greenhouse.

Commissioner Batchelder invited the applicant to make a presentation.

Stuart Knight, authorized agent, said that the applicant was to add 5,000 square feet of cultivation area and six conex boxes for production to an existing, licensed facility. Despite what some public comment had claimed, the application was not seeking to quadruple the size of the facility, nor was it seeking to expand the plant count as authorized by the Tier 1 license with the State. Knight said that the business was not seeking to add any new licenses or be exempt from Ordinance 2019-01. He said that the applicant concurred with all of the conditions recommended by staff.

Knight wished to address some of the points raised by public comment. He said that the application was not deficient, as proven by staff's approval and subsequent forwarding to the Local Licensing Authority. Knight pointed out that prior to notification of the application to adjacent property owners, no complaints had been received by staff or by the Sheriff's Office. He said that the various comments were filed from a vocal minority that opposed marijuana cultivation. He said that the applicant's desired to continue to be a good member of the community.

Knight said that the greenhouse was under construction, and regardless of whether or not the Licensing Authority approved the use of the facility for marijuana cultivation, the greenhouse would be used for general cultivation. Knight said that the use was a 5,000 square foot greenhouse in the middle of a forty acre lot; it was not a factory or an industrial endeavor. He said that the operators had no desire to increase the plant level above a tier 1 license.

Knight said that some Colorado residents did not like marijuana cultivation; however, it was a use allowed by the Colorado Constitution. He said that the applicant was seeking permission to cultivate marijuana on a large plot of land with substantial impact mitigation efforts including carbon filters, light dampeners, and visual impact screening. He said that the operator had taken significant steps to lessen any perceived impact and would continue to do so into the future.

Commissioner Batchelder invited the LLA to ask clarification questions.

Commissioner Peters asked how many plants could be cultivated under the Tier 1 licenses. Daniel Castillo, applicant, stated that 1,800 plants could be cultivated under the license; he said that that current size of the facility could manage 500 plants. Commissioner Batchelder said that the State set the plant count limitations associated with license tiers. Castrodale affirmed that was correct.

Commissioner Batchelder inquired about the complaints received. Castrodale said that a complaint regarding odor had been received on June 18, 2020. He said that staff had not yet followed up on the complaint.

Daniel Castillo, MS Support, presented the history of the license, gave a virtual tour of the facility, and introduced the employees of the operation. He noted that the facility had operated from 2016 to 2019 with no major issues or complaints. Castillo emphasized that he and his family resided on the property and his desire to keep the area free from nuisance; he said that he was personally accountable for the operations on the property.

Castillo moved on to address some of the concerns brought up in written public comments received. He said that all employees were approved by the Marijuana Enforcement Division (MED) and had passed a

Colorado Bureau of Investigation (CBI) background check. He had conducted a noise study with the help of Land Use Staff in 2019 and discovered that there was no ambient noise present at the property line. Castillo explained that he had installed various visual impact mitigation solutions including a tree-topped berm, camo netting and had designed the greenhouse to be as minimally obtrusive as possible. Castillo recognized that some of the camo netting had become worn or had been torn down in some areas due to the high winds experienced in the spring and summer. He said that he immediately worked to address the issue and installed new anchors to secure the netting. Castillo invited any questions.

Commissioner Batchelder inquired about the the property ownership. Knight clarified that Lifetreat, LLC was the property owner and Castillo was a part owner of the company.

Commissioner Tisdel was pleased that the facility utilized natural light. Castillo agreed and cited the rationale for constructing a greenhouse. He said that the facility was equipped with lights, but that they were usually not utilized. Commissioner Tisdel asked if that reduced the facility's energy consumption as well. Castillo said that it did. Commissioner Peters asked if the greenhouse lights were used at night. Castillo said they were not.

Commissioner Peters asked about the frequency of harvest. Castillo explained that the current facility was operating at maximum capacity of the current greenhouse with 500 plants. The plants were harvested every three-to-four weeks; Castillo said that he delivered the product to retail facilities approximately two times per week.

Commissioner Batchelder asked for public comment.

Eric Havelick, 135 Melody Lane, wished to address the comment regarding complaints. He said that fellow Melody Lane residents Mike and Jessica Myer had made multiple complaints in the previous year. He said that they were told to call the Sheriff's dispatch number and the deputy would come out to make a report. He cited a specific complaint on May 29th at 7:22 that the Sheriff's deputy was requested to make a complaint and forward to the appropriate person. Havelick said that Jessica Myer had been assured by the County Undersheriff that the complaints would be passed on. Regarding odor, Havelick said that the smell was transient and occasional making it difficult for County personnel to verify the complaint. Havelick said that odor issue had not been satisfactorily addressed and questioned the ability to assuage issues with 1,800 plants. Havelick said that the sounds from the facility's fans were tantamount to constant traffic noise. Havelick said that the visual impact mitigation efforts were not adequate and that the berm was an eyesore. He said that the culmination of all of the issues made it difficult to trust the facility operators. He encouraged unannounced compliance checks to ensure the facility was operating within the confines of their license.

Mary Tarr, Mary's Road resident, said that she had been following the project since its inception. She said that the facility was in compliance with state and local regulations. She felt that the LLA should encourage small businesses.

Natalie Ricks, CEO of Rocky Mountain Cannabis, said that her company purchased product from MS Support. She said that over the last six months, MS Support products had resulted in the distribution of approximately $6,000 worth of taxes. She said that during a global pandemic it was more important than ever to foster small businesses, particularly businesses that generated local tax revenue. Ricks said that the operator was a good member of the community.

Tyler Ferguson, County resident, was present in support of the applicants and of agriculture in the County. He said that the applicant was complying with the County and State protocols and worked with neighbors to mitigate concerns.

Jason Flint, MS Support Head Grower, addressed concerns regarding increased noise from fans operating within the facility. He said that newer, quieter fans would be installed in the facility. He said that the operation was constantly monitored by the MED and other organizations like the Department of Agriculture.

Jeff Hurd, Ireland Stapleton Pryor & Pascoe, PC, was present on behalf of Log Hill Neighborhood Action, a collective of neighbors living near the facility that opposed the major modification. Hurd said that it was reasonable for neighbors and the LLA to have questions related to the intent of the application due to the facility expansion. He reminded the LLA that when the applicant applied for a building permit to construct a 10,000 square foot greenhouse facility, it was claimed that it would be for general cultivation not related to marijuana. Hurd highlighted several issues related to the application making it insufficient. He said that it was unclear to what the applicant was seeking to do with the application. He questioned why the LLA should be assured that the applicant was truthful in the request when the building permit for the greenhouse had been applied for under false pretenses. He pushed back on a statement by Knight that the applicant had been truthful and upfront with the neighbors; he said that the applicant could have been upfront about the real use of the greenhouse. Hurd read from a list of assurances from a previously submitted and denied application regarding water usage and disposal, traffic and visual impact plans. He did not believe that the application in front of the LLA differed from request previously denied by the LLA. In fact, Hurd questioned why the application was even allowed to proceed as the LLA had found that construction of a 10,000 square foot facility for the purpose of marijuana cultivation would be inconsistent and disrupt the surrounding area.

Hurd said that there were three major points for consideration: completeness, candidness, and compliance; the application lacked all three and thereby merited rejection. He said that the applicants had failed to operate the facility in compliance with Ordinance 2019-01. He cited several complaints from neighbors that went uninvestigated, specifically citing Section 7(C)(5) of the Ordinance which required the applicant to show evidence of no violations. Hurd continued to say that MS Support had not met the burden to provide accurate and correct information. Hurd said that the efforts of MS Support to install visual impact mitigations were unmet as the evergreen trees were struggling to stay alive and the camo

netting had fallen down during one point in the spring. He said that the failure to comply with the directives of the County and failure to meet the requirements for expansion of the facility merited a rejection of the major modification application.

Zane Mund, Mary's Road resident, said that he had previously owned the facility. He said the "wild west" of marijuana cultivation in 2015 was very different than operating a marijuana facility currently. He said that the current owners were well versed in cultivation and had streamlined the business to operate with minimal impact. Additionally, he said that the original greenhouse had been engineered, built and stamped for all pertinent and existing regulations at the time.

George Kerber, County Road 22 resident, said that the major modification request cited the County's "Right-to-Farm" designation as justification for approval. He said that Amendment 64 gave communities the right to prohibit and regulate marijuana businesses and that the Colorado Constitution overrode the County's "Right-to-Farm" Ordinance. Kerber said that there was no County-definition of "nuisance" making it difficult to deem something a nuisance. Kerber said that the operator had claimed that there would be no odor related to the facility, yet there were odor complaints. He said that the complaints went uninvestigated. Gerber said that the 2019 Major Modification had been denied as it did not meet Sections 7(C)(3), (12), and (15) in the Ordinance; regardless, the property owner submitted a building permit for a 10,000 square foot foundation, claiming that it would be used for non-marijuana related cultivation. Kerber said that he predicted that MS Support would then approach the LLA for approval of a modification for the purpose of cultivating marijuana. He said that it was unreasonable to believe that the property owner would construct a 10,000 square foot greenhouse adjacent to a marijuana cultivation facility for the purpose of growing ginseng. Kerber said that the facility was incapable of meeting the provisions in Ordinance 2019-01 currently and therefore should be denied the ability to expand. Kerber said that Ordinance 2019-01 prohibited new marijuana cultivation facilities in the North Mesa Zone, but grandfathered the MS Support facility. He said that those who lived in the area before Amendment 64 passed wanted the character of their community to be grandfathered in as well; he said that the residents of the North Mesa Zone were being sacrificed for tax dollars.

Scott Bridgman, County Road 22 resident, recalled that the 2019 Major Modification request was denied based on MS Support not being able to meet three of the fifteen stipulations in Ordinance 2019-01 relating to neighborhood characteristics. Since the denial, nothing had changed regarding the negative impacts of MS Support's operation and that the application before the LLA should be denied. Bridgman cited significant omissions of important details in the application in addition to impacts on the neighborhood including noise and odor. Bridgman proposed that the financial investment required to expand the facility be redirected for the current facility to achieve zero impact on the neighborhood. Bridgman said that original marijuana cultivation facility was ill-conceived as the area was dominated by residential properties, legitimate farming and ranching, and other small businesses. He claimed that the quality of life and property values had diminished as a result of the facility. Bridgman questioned what would happen to the facility when the industry went bust. He said that single family residential development was a better investment and tax base for the County. Bridgman stated that he was against any future expansions or license approvals in residential areas. He suggested that a minimum four mile radius be required for marijuana cultivation facilities from residential dwellings. He asked that the application be denied.

Michael Cox, Dalwhinnine Farms and County resident, supported the applicant and approval of the request. He found it interesting that Castillo was being called a bad neighbor as cultivation facilities were required to abide by a myriad of rules and regulations. He said that it should not be a problem for a business owner to change his or her mind when it came to business decisions. Cox said that MS Support was operating with little impact.

Robert McGowen, County Road 22 resident, said that the property was never part of the Singing Hills subdivision. He said that the previous property owner had an easement through the parcel to the west in order to reach County Road 22. He said that the property was not set up to utilize Melody Lane. He said that it was not suitable for unrestricted commercial use. He said that Melody Lane was a private road. McGowen continued to say that domestic water should not have been permitted to be used for marijuana cultivation, noting that he had never seen a record of the facility's water usage. McGowen claimed that MS Support burned plant material despite the prohibition on that type of disposal. McGowen said that no noise study had been completed for the property, and said that the application did not contain any information regarding how noise from the facility would be mitigated. Regarding visual impact, McGowen said that the area was frequently impacted by high winds and that the berm and camo netting were insufficient. He questioned how the use was compatible with residential properties. McGowen said that the application should be denied based on the submittal being deficient.

Jessica Myer, Melody Lane resident, said that she had documentation of her complaint to the Sheriff's office in May. Additionally, she had spoken with the County Undersheriff who assured her that her complaint would be documented and forwarded to the proper employee. She was frustrated that none of her complaints had been acknowledged. Myer said that the use was not compatible with the neighborhood. Myer said that parents of her children's friends refused to come over due to their home's proximity to a cultivation facility. Myer respected the efforts of the operator to mitigate the impacts, but said that the facility should be located in a more rural area. Myer requested that her complaints be put on the record and investigated.

Commissioner Tisdel asked if Myer had ever used the Marijuana Cultivation Facility Complaint Form. Myer said that she did and that the County Undersheriff should have received it via email.

David Beckhardt, County Road 22A resident, said that the staff report made it clear that marijuana cultivation facilities could produce industrial wastewater, thereby deeming it an industrial operation. Despite the report indicated that the facility was now in compliance, Beckhardt said that there were several critical questions regarding wastewater. He asked if staff received the facts about prior operations

by conducting onsite inspections before notifying the applicant of the regulations. He asked when the applicant began complying with the regulations, and how much wastewater related to cultivation had been discharged and for how long. Finally, he asked about the plan to investigate whether the soil and groundwater had become contaminated. Beckhardt moved on to highlight that supplemental information related to Section 7(C) had been submitted only a week prior and included in the application like it had always been there. Beckhardt sought clarity regarding the plant count. He said that the applicant had claimed that they would not expand the plant count; he asked if the applicant planned to keep the plant count at 500, as that is what the facility was currently capable of handling, or if the applicant was planning to install up to 1,800 plants as allowed under the Tier 1 license. Beckhardt said that if the plan was to increase the number of plants growing, it was safe to assume that more vehicle trips would be necessary for deliveries, shipments, and inspections. Beckhardt said that the applicant's water consumption numbers were not believable. He said that the application stated the facility utilized 1.2 gallons of water per minute, resulting in 1,728 gallons per day currently; however the application later stated that the proposed modification would result in an estimated usage of 900-1,500 gallons per day for the entire operation. Beckhardt concluded his statement by saying that the claim that the facility was not an industrial operation was refuted by the inclusion of documents from the State and EPA showing that marijuana facilities produced industrial wastewater.

Alexandra Perez, MS Support, said that it was difficult to read some of the disparaging comments regarding the facility and staff from her neighbors. She said that she and Castillo purchased an already permitted, Tier 1 marijuana cultivation facility. Perez said that it was never the intent to be deceitful or cause harm to the neighborhood. She said that the business needed to be able to expand in order to fulfill the license requirements. Perez noted that she and Castillo lived on the property and wanted it to be a nice place to live for everyone.

Jason Flint, MS Support, responded to Beckhardt's statement regarding water usage. He said that 1.2 gallons per minute was an estimate based on some of the older equipment. Additionally, water was not used constantly all day. He added that newer equipment would be installed that would improve noise and odor impacts.

Jennie Bridgman, County Road 22 resident, said that enforcement and compliance was needed. She said that her home looked down directly on the facility and that there was no way to block or mitigate the facility. She said that it was an eyesore.

George Kerber asked why the applicant applied for a building permit for the greenhouse and claimed the use would be for ginseng, bamboo, or hemp.

Beckhardt said that the figures he had utilized had been presented by the applicant in 2019 and the usage came out to approximately one gallon per day; he said that the point was that the statements made in the application lacked clarity and accuracy.

Hearing no other public comment, Commissioner Batchelder closed the comment portion of the proceeding.

The LLA discussed continuing the hearing to another date, but ultimately decided to break for lunch and reconvene to allow the applicant to respond to some of the public comment.

Castrodale clarified that the County did not regulate water or power usage; he said that Ordinance 2019-01 encouraged best practices. He said that the will serve letters from Tri County Water and San Miguel Power Association were issued based on a10,000 square foot greenhouse facility; he assumed they would still be valid for the 5,000 square foot facility being applied for.

12:24 The Board took a break for lunch and reconvened at 1:03:

Commissioner Batchelder invited the applicant to respond to public comment.

Knight addressed the statement regarding the noise study performed in 2019. Knight reminded the LLA that the County Land Use Staff had performed the study and it had found no ambient noise at the property line. Regarding references to complaints submitted to County staff and Sheriff's department, Knight requested the documentation. Knight said it was clear that some neighbors had a personal moral objection to marijuana, and that they were mounting an effort to close MS Support for good. Responding to the question of how neighbors could be assured that MS Support would abide by the limits of their license, Knight said that the cultivation facility was subject to inspections and constant monitoring by the MED and other regulatory departments at the State. He said that operating outside of the terms of the license would jeopardize the facility. Knight encouraged that the inspections be unannounced and frequent. Knight said that the claims that the operator had been fraudulent in the application for the building permit were unfounded. He said that the operator could not use the greenhouse without obtaining a major modification of premises approval from the County, which is exactly what the applicant was doing. He added that if the application was denied, the operator would utilize the greenhouse for non-marijuana cultivation. Knight indicated that the applicant was willing to accept an additional condition stating that MS Support would not apply for a Tier 2 license or any additional major modification of premises relating to cultivation if this application as approved. He reiterated that it was not the operator's intent to be a large scale cultivation operation; it was a family-operated farm for the purpose of marijuana cultivation that complied with all state and local regulations. Knight elucidated his point by saying that the operator immediately mitigated and corrected the OWTS violation, proving that the operators were good, responsible members of the community and were willing to abide and respond to all regulations. He said that it was difficult to see what else could be done to prove to the neighbors that the facility was permitted use that was operating with the confines of the law. Knight encouraged the LLA, Staff and members of the public to bring questions and concerns to the operator as soon as they were realized in order to facilitate quick mediation.

Commissioner Tisdel asked if the greenhouse had been completed, and if it was currently being utilized for something. Castillo said that it was still under construction and was currently completely empty.

Commissioner Peters said that there had been a comment that the operator had been burning marijuana slash on the property. Castillo affirmed that the statement was not correct.

Commissioner Batchelder acknowledged that the LLA had received and reviewed public comments via email and mail.

Commissioner Batchelder asked Sampson if the application received by Land Use staff was complete. Sampson said that it was. Commissioner Tisdel agreed that the submittal requirements specified by Ordinance 2019-01 had been satisfied, including the notification requirements in Section 19(f). The LLA agreed to the finding.

The LLA agreed that, with the exception of Sections 7(C)(2), (3), (12), 10(H) and the submittal requirement pertaining to wastewater, the application conformed with Ordinance 2019-01, or that certain sections / provisions were not applicable.

Regarding the wastewater provision, Commissioner Batchelder stated that he believed the applicant had worked to adequately deal with the issue. In addition, Staff had recommended that a condition of approval be included that stated: "The applicant shall ensure that any waste-water from the marijuana cultivation operation (except for domestic water use, such as in the bathroom and / or kitchen) does not enter an OWTS system. The Applicant shall either collect ALL waste-water for re-use, or transportation to a certified treatment facility, or dispose of the waste-water into a Class 5 injection well that is approved by the Environmental Protection Agency (EPA)." Due to the applicant working with staff and EPA representatives to mitigate the issue, and the inclusion of Condition 7, the LLA agreed that the applicant is in compliance with the provision.

Commissioner Tisdel said that Condition 10(H) required that cultivation facilities reduce visual impacts through blending, architectural design, landscaping, and etcetera. He said that the discussions around blending and screening for the facility had resulted in a requirement for the operator to install trees on a berm in an area that may not be conducive to large trees. He said that the applicant had demonstrated a willingness to try innovative screening elements like the camo netting. He agreed that there was a need for ongoing maintenance of the netting and other screening implements. He said the operator had demonstrated good faith efforts to screen and blend the facility. Additionally, Commissioner Tisdel requested that the greenhouse be antireflective. Commissioner Batchelder asked if Commissioner Tisdel was recommending additional language be added to Condition 4. Commissioner Tisdel thought that the language as presented by staff was adequate; however, he requested that an additional condition be added to state: *"The applicant shall work with Land Use Staff to identify and utilize antireflective coating on the greenhouse structure, to the extent possible."* The LLA and the applicant agreed to the additional condition.

Commissioner Tisdel asked if the LLA would be willing to remove the requirement for trees on the berm as the trees installed might not be suitable for the climate. Castillo said that the trees were junipers and were suitable for the climate. The LLA agreed to retain the requirement for trees.

Commissioner Peters said that Section 10(H) was nebulous. He agreed that the operator had put forth a good faith effort to comply with the Section. He said that it was impossible to fully screen the facility from properties above the facility.

The LLA agreed to the finding that MS Support had reduced the visual impact of structures through the utilization of camouflage fencing / netting, building orientation, and paint color. Furthermore, the LLA recognized that when reviewing nebulous items like visual impact, it should be compared to the impact resulting from uses-by-right. The LLA agreed that the proposed greenhouse structure would have no more impact than that associated with a use-by-right for the North Mesa Zone. The LLA found that the applicant had provided sufficient evidence that the provisions of Section 10(H) had been met.

The LLA moved on to discuss compliance with Section 7(C)(2). Commissioner Tisdel said that the review was limited to the application for the use of an existing greenhouse for marijuana cultivation. He said that the use of the property for a cultivation facility already existed. He confirmed that the LLA could not consider the merits or points of a previous application before the LLA. Viner confirmed that Commissioner Tisdel was correct. Viner explained that the applicant had exercised their use-by-right to construct a greenhouse in the North Mesa Zone, and was now requesting a major modification of premises for the purpose of utilizing the greenhouse facility for marijuana cultivation.

Commissioner Tisdel said that the LLA had received testimony that the additional cultivation space would result in increased odor and noise; however, the LLA had also received evidence that additional filters and mitigation would be utilized. He said that Section 7(C)(2) simply stated that "Evidence that the facility will not disrupt the character and use of surrounding properties." He said that testimony had been received by neighboring property owners of potential impacts, but that the testimony related to the presence of the existing, approved operation. Commissioner Batchelder concurred with Commissioner Tisdel. Commissioner Peters questioned if the construction of a 5,000 square foot greenhouse would disrupt the community character. Commissioner Batchelder said that construction of a greenhouse was a use-by-right, as was the placement of a shipping container; the only reason the LLA was receiving the application was due to the applicants wishing to cultivation marijuana.

The LLA agreed that Section 7(C)(2) had been met due to evidence that appropriate mitigation methods would be installed and that the structure complied with the use-by-right provisions of the North Mesa Zone.

The LLA agreed that Section 7(C)(3) had been met due to the evidence that proper odor and noise mitigation would be implemented.

Commissioner Batchelder addressed Section 7(C)(12). He reminded the LLA that they were only considering the modification request as the current use had already been approved. Commissioner Tisdel said that the use of the property as a cultivation facility was already permitted, therefore the modification was in line with the community character and surrounding land uses in the area. Commissioner Peters was concerned with the representation that the greenhouse was originally constructed as a non-marijuana related facility. He asked if the LLA would be willing to institute an additional condition prohibiting any future expansion for the purpose of expanded plant count past a Tier 1 license and the 5,000 square feet of additional greenhouse space requested in the application. Knight said that the operators was willing to accept an additional condition that stated *"No future major modification of premises that would result in an expansion of the cultivation area."* He said that the applicant wished to reserve the right for modification for other reasons, not pertaining to the cultivation area or plant count. The LLA agreed to the additional condition.

Commissioner Batchelder asked if the LLA would consider an additional condition limiting cultivation space of the 5,000 square foot facility to 2,500 square feet for the first year; the remaining 2,500 square feet could be utilized for cultivation only if no substantiated complaints had been received without mitigation or resolution. Viner was concerned about inviting complaints and tying up staff time with unsubstantiated complaints. Castrodale agreed; he said that Land Use staff was not always available to immediately go out and conduct and investigation. He said that it could take a few days. He did not want to set up a situation where the neighbors, applicants or staff were frustrated. Commissioner Batchelder said that the condition put the onus on the operator to ensure there were no complaints. The LLA agreed to an additional condition to state: *"The applicant agrees to limit cultivation of the 5,000 square foot greenhouse to a maximum of 2,500 square feet for the first year of operation. If no substantiated violations are determined founded during that period, without mitigation and / or resolution, the applicant will be permitted to begin cultivation for the remaining 2,500 square feet, 1-year from the approval/adoption of this Resolution."* Based on the findings as discussed and the addition of two conditions, the LLA concluded that the application conformed with Section 7(C)(12).

Castillo confirmed that the remaining 5,000 square feet of the greenhouse structure would be used for non-marijuana related activities, like storage. The areas would be separated by a six foot fence.

Regarding Section 7(C)(15), the LLA agreed that testimony had been received that indicated that the application would further the goals of economic development and diversity as outlined in the County Master Plan.

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve the request by MS Support, LLC to expand the existing marijuana cultivation facility, by adding a 5,000 square foot greenhouse and the placement of six (6) conex boxes (storage containers) with the seven conditions recommended by staff, plus the addition of three conditions as agreed to by the Local Licensing Authority.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

2:45 The Board took a short break:

D. 2:50 General Business:

8. Request for approval and authorization of Chair's signature on Intergovernmental Agreement (IGA) between Ouray County, City of Ouray and the Town of Ridgway related to Distribution of CARES Act Funds:

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on Intergovernmental Agreement (IGA) between Ouray County, City of Ouray and the Town of Ridgway related to Distribution of CARES Act Funds.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

9. Request for approval of payment to Charles Cunniffe Architects:

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve the payment to Charles Cunniffe Architects.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

C. 255 The Board of County Commissioners convened as the Board of Health to consider the following item:

1. **Request for approval and authorization of County Administrator's signature on State of Colorado CARES Act Notice of Award and Certification Letter and on the Fiscal Impact Form:**

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize the County Administrator's signature on State of Colorado CARES Act Notice of Award and Certification Letter and on the Fiscal Impact Form.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

2. **Request for approval and authorization of Chair's signature on the following items, Fiscal Impact Forms and authorization of the Public Health Director's submission and signature electronically:**

   a. **Office of Planning, Partnership and Improvement (OPPI) Contract Amendment #1:**

   b. **Office of Emergency Preparedness Budget Form for Personnel Services expenses related to the COVID-19 response:**

   c. **Communities That Care (CTC) Contract Amendment #2:**

M/S/P – *Motion was made by Commissioner Tisdel and seconded by Commissioner Peters to approve and authorize Chair's signature on Office of Planning, Partnership and Improvement (OPPI) Contract Amendment #1; Office of Emergency Preparedness Budget Form for Personnel Services expenses related to the COVID-19 response; Communities That Care (CTC) Contract Amendment #2; and on the associated Fiscal Impact Forms and authorization of the Public Health Director's submission and signature electronically.*

A roll call vote was taken on the motion with the following results:

Commissioner Batchelder voted in the affirmative.
Commissioner Tisdel voted in the affirmative.
Commissioner Peters voted in the affirmative.

There was no discussion. Motion passed unanimously.

E 2:59 Commissioner/Administrative Reports:

The Board discussed the following topics:

- Regional approach to COVID-19 response;
- Direction given to the Road and Bridge department to review an area of Imogene Pass for potential improvements; and,
- Consideration of a ballot question to de-Gallagherize the County's budget. The Board directed Hunt to prepare a letter of intent for a ballot question to the County Clerk and Recorder for consideration at the next meeting.

3:06 The Board of County Commissioners adjourned the regular session.

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Don Batchelder, Chair

Ben Tisdel, Vice-Chair

John E. Peters, Commissioner Member

Attest:

SEAL

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