

**GUNNISON COUNTY BOARD OF COMMISSIONERS  
REGULAR MEETING MINUTES  
September 18, 2007**

The September 18, 2007 Board of Commissioners meeting was held in the Commissioners Meeting Room at the Courthouse. Present were:

Hap Channell, Chairperson  
Paula Swenson, Vice-Chairperson  
Jim Starr, Commissioner

Matthew Birnie, County Manager  
Katherine Haase, Clerk to the Board  
Others Present as Listed in Text

**CALL TO ORDER:** Chairperson Channell called the meeting to order at 8:02 am.

**CONSENT AGENDA:** **Moved** by Commissioner Swenson, seconded by Commissioner Starr to add \$1,000 for CCP Inventory Funding Approval to the Consent Agenda. Motion carried unanimously. **Moved** by Commissioner Swenson, seconded by Commissioner Starr to approve the Consent Agenda and authorize signatures. Motion carried unanimously.

**SCHEDULING:** The Upcoming Meetings Schedule was discussed and updated.

**COUNTY MANAGER'S REPORT & CORRESPONDENCE:**

1. 2007 Farm Bill Correspondence. County Manager Birnie provided draft correspondence for consideration, addressed to Senator Ken Salazar, regarding the 2007 Farm Bill. This letter was discussed, amended and signed. It was then placed on the October 2, 2007 Consent Agenda for formal ratification.
2. Energy Efficiency Resolution. County Manager Birnie stated that, while the board reviewed and consented to the draft resolution, there had been no vote to date. He also stated that the City of Gunnison passed a similar vote. Chairperson Channell noted that jurisdictions are approving this resolution independently to later sign ceremonially. **Moved** by Commissioner Starr, seconded by Commissioner Swenson to adopt Intergovernmental Resolution #2007-32, A Resolution Supporting Collaboration Among Governmental Agencies in the Valley and Promoting Public Awareness Via Education and Outreach to Reduce Energy Consumption Thereby Increasing Quality of Life, Environmental and Economic Benefits for the Citizens of the Gunnison Valley. Motion carried unanimously. Chairperson Channell also noted that this is the first resolution jointly supported between all four jurisdictions of the Gunnison Valley.
3. Willows. County Manager Birnie reported that he will be meeting with Gunnison Valley Hospital Administrator Randy Phelps and Board of Trustees member Malte vonMatthiessen on September 24, 2007 to further current negotiations. County Manager Birnie reported that no hospital-board vote had been made to date, per Mr. Phelps, and that the outcome remains uncertain.
4. Staff-Recommended Budget. County Manager Birnie reported that he and Personnel Director Debbie Moore will be working with all department heads during the next two weeks in order to assemble the staff-recommended budget. He also reported that his approach will be to prioritize salaries due to the rapid increase in the local cost of living.
5. Housing Authority Financial Assessment. County Manager Birnie reported meeting with Gunnison County Housing Authority Executive Director Denise Wise and Finance Director Linda Nienhueser and that meetings will continue until a complete and accurate financial picture is determined for the Housing Authority. He also stated that figures should be calculated by the end of the week.

**ASSISTANT COUNTY MANAGER'S REPORTS & PROJECT UPDATES:** Assistant County Manager Marlene Crosby was not available for discussion.

1. Ragged Mountain Fire Protection District Agreement. County Manager Birnie stated that this agreement was not yet ready for signature.

**BREAK:** This meeting recessed from 8:42 until 8:51 am.

**MCFAUL RESIDENCE UPDATE; POSSIBLE EXECUTIVE SESSION:** Assistant County Attorney Tom Dill and County Attorney David Baumgarten were present for discussion.

County Attorney Baumgarten reminded all parties that Mr. McFaul built a larger house than what would be allowed by the covenants and also larger than what was originally presented to the county for approval. He also noted that, if Mr. McFaul could somehow settle this matter with his homeowners' association, then the county could potentially issue a permit.

County Attorney Baumgarten reported that Mr. McFaul terminated his legal representation arrangement with attorney Art Tresize and has since retained Rothgerber, Johnson and Lyons, the same Denver law firm that is representing Hidden Mine Ranch in a separate lawsuit. He further explained that an administrative hearing may be held, with the board choosing the administrative hearing officer, to possibly result in abatement. He also stated that this alternative would be less-expensive and more-effective than litigation. County Attorney Baumgarten then recommended entering an executive session so that he could fully explain the differences between an administrative hearing and the formal court

process. Participants of the executive session were outlined as Chairperson Channell, Commissioner Swenson, Commissioner Starr, County Manager Birnie, Assistant County Attorney Dill and County Attorney Baumgarten. **Moved** by Commissioner Starr, seconded by Commissioner Swenson to go into executive session for that purpose and with those individuals. Motion carried unanimously.

The Board went into executive session at 9:10 am. *Executive sessions of the Board of County Commissioners are conducted as per C.R.S. 24-6-402(4). This specific session was conducted as per C.R.S. 24-6-402(4)(b).*

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Attorney Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402 (2)(d.5)(II)(B), I attest that I am the Gunnison County Attorney, that I represent the Gunnison County Board of County Commissioners, that I attended all of the above referenced executive session, that all of the executive session was confined to the topic authorized for discussion pursuant to C.R.S. 24-6-402(4) and that, because in my opinion all of the discussion during the executive session constituted a privileged attorney-client communication, no record of the executive session was required to be kept and no such record was kept.

Date: \_\_\_\_\_

\_\_\_\_\_  
David Baumgarten  
Gunnison County Attorney

Chairperson Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402(2)(d.5)(II)(B), I attest that I am the Chairperson of the Gunnison County Board of Commissioners, that I attended all of the above referenced executive session, and that all of that executive session was confined to the topic authorized for discussion pursuant to C.R.S. 24-6-402(4).

Date: \_\_\_\_\_

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Hap Channell, Chairperson  
Gunnison County Board of Commissioners

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The Board came out of executive session at 9:18 am. Chairperson Channell confirmed that the executive session discussion remained on-topic; that all parties stated to be in attendance were, in fact, in attendance; and that no decisions were made. **Moved** by Commissioner Starr, seconded by Commissioner Swenson to direct the county attorney to notify Mr. McFaul, pursuant to Section 16-107(b)(1) of the LUR, to abate the violations of the LUR which exist at Mr. McFaul's residence in the Red Mountain Ranch Subdivision within 30 days. Motion carried unanimously.

**MT. CRESTED BUTTE WATER AND SANITATION DISTRICT FILING OF CONDEMNATION ACTION AGAINST ALLEN & SONS, INC.; GUNNISON COUNTY, ET AL, POSSIBLE EXECUTIVE SESSION:** County Attorney Baumgarten and Assistant County Attorney Dill were present for discussion.

County Attorney Baumgarten reported receipt of documents initiating a lawsuit between petitioner, Mt. Crested Butte Water and Sanitation District; and respondents Allen & Sons, Inc., Gunnison County, the Town of Crested Butte, Gunnison County Electric Association, Inc., Anton Kapushion & Co., and the Gunnison County Treasurer. This action asks for the immediate possession of a parcel of land via an eminent domain or condemnation lawsuit. County Attorney Baumgarten defined eminent domain as an authority granted to government in order to take private property and to use that property for a governmental purpose with payment for that property being decided by either a commission appointed by the court or a jury.

County Attorney Baumgarten stated that the piece of land being requested in this lawsuit is less than one-acre in size. He further explained that the Town of Crested Butte and the City of Gunnison are listed as parties in this lawsuit because this land was designated as a recreation trail in the early 1990's and that both entities are listed on the title commitment. He also explained that the local owner possibly would have given this easement in order to avoid potential liability of injury sustained on this land. County Manager Birnie also explained that the Mt. Crested Butte Water and Sanitation District would like to dismiss the county from the lawsuit. County Attorney Baumgarten suggested entering into an executive session in order to explain any benefit or detriment of being dismissed from this lawsuit, with participants being Chairperson Channell, Commissioner Swenson, Commissioner Starr, County Manager Birnie, Assistant County Attorney Dill and County Attorney Baumgarten. **Moved** by Commissioner Starr, seconded by Commissioner Swenson to go into executive session for the purpose stated with the individuals listed. Motion carried unanimously.

The Board went into executive session at 9:25 am. *Executive sessions of the Board of County Commissioners are conducted as per C.R.S. 24-6-402(4). This specific session was conducted as per C.R.S. 24-6-402(4)(b).*

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Attorney Statement Regarding Executive Session

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Date: \_\_\_\_\_

\_\_\_\_\_  
David Baumgarten  
Gunnison County Attorney

Chairperson Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402(2)(d.5)(II)(B), I attest that I am the Chairperson of the Gunnison County Board of Commissioners, that I attended all of the above referenced executive session, and that all of that executive session was confined to the topic authorized for discussion pursuant to C.R.S. 24-6-402(4).

Date: \_\_\_\_\_

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Hap Channell, Chairperson  
Gunnison County Board of Commissioners

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The Board came out of executive session at 9:44 am. Chairperson Channell confirmed that the executive session discussion remained on-topic; that all parties stated to be in attendance were, in fact, in attendance; and that no decisions were made.

Chairperson Channell reported that the executive session was beneficial and that the county desired to remain a party to this lawsuit until such time that action is taken to dismiss the county.

**LOT CLUSTER AGREEMENT – SUZANNE E. LAYNE, LOTS 1, 2, 9 & 10, BLOCK 4, HERMITS HIDEAWAY SUBDIVISION, COUNTY OF GUNNISON, STATE OF COLORADO:** Planning Department Services Manager Beth Baker was present for discussion.

**Moved** by Commissioner Swenson, seconded by Commissioner Starr to approve the Lot Cluster Agreement for Gunnison County and Suzanne E. Layne, Lots 1, 2, 9 & 10, Block 4, Hermits Hideaway Subdivision and authorize signatures. There was discussion and agreement that the language within paragraph 5 should be modified to state approval of an "Individual Sewage Disposal System" instead of an "Individual Septic System". Motion carried unanimously.

**LOT CLUSTER AGREEMENT – 2000 CHARLES A. ENSMINGER ANNUAL GIFT TRUST, LOTS 74, 75 & 76, BLOCK 2, MARBLE SKI AREA, CRYSTAL RIVER FILING, COUNTY OF GUNNISON, STATE OF COLORADO:** Planning Department Services Manager Baker was present for discussion.

Chairperson Channell restated the necessary language change within paragraph 5 as noted in the in above Lot Cluster Agreement. **Moved** by Commissioner Swenson, seconded by Commissioner Starr to approve the Lot Cluster Agreement between Gunnison County and Charles A. Ensminger Annual Gift Trust, Lots 74, 75 & 76, Block 2, Marble Ski Area, Crystal River Filing, County of Gunnison and authorize signatures, with the change in wording in paragraph 5. Motion carried unanimously.

**DATA COLLECTION FUNDING APPROVAL:** This item was erroneously added to the Consent Agenda at the beginning of the meeting. **Moved** by Commissioner Swenson, seconded by Commissioner Starr to approve the Gunnison Valley contribution to the CCP Data Collection. Motion carried unanimously.

**RESTORATIVE JUSTICE PROGRAM UPDATE:** Restorative Justice Director Don Wills was present for discussion.

Restorative Justice Director Wills presented a program update to the board in order to meet the requirement set forth in the funding agreement between Gunnison County and Restorative Justice. He went on to state that his office was referred a record 20 cases for the first two quarters of 2007, that expenditures have been managed by case referrals and that one half-time employee has been added. Additionally, he estimated a program success rate of 70-80% for the 60-70% of individuals that complete the program.

Restorative Justice Director Wills stated that Restorative Justice continues to work closely with the local school district and the probation department while focusing on victim impacts. He also invited the board to participate in an upcoming non-violent session that he is planning for November 2007.

Commissioner Starr stated his appreciation for the Restorative Justice program and for the efforts of all persons involved.

**BREAK:** This meeting recessed from 10:13 am until 10:25 am.

**GUNNISON VALLEY AVIATION FBO LEASE AGREEMENT:** County Attorney Baumgarten, Airport Manager John DeVore, attorney Mike Dawson and Gunnison Valley Aviation representatives Dick Hayes and Pat Lazerus were present for discussion.

Airport Manager DeVore stated that Hangar 4 needs to be replaced because repairs would be too costly and that, due to this need, the FBO lease would need amended. County Attorney Baumgarten presented draft Addendum #5 that was discussed and amended. **Moved** by Commissioner Swenson, seconded by Commissioner Starr to approve Addendum #5, New Hangar No. 4, and Second Amendment to the FBO Master Operating Agreement and Lease, between Gunnison County Commissioners and Gunnison Valley Aviation, LLC and authorize chair signature as amended. Motion carried unanimously.

**A RESOLUTION URGING COMPREHENSIVE REFORM OF THE GENERAL MINING LAW OF 1872:** County Attorney Baumgarten was present for discussion.

County Attorney Baumgarten presented the amended resolution for consideration. **Moved** by Commissioner Swenson, seconded by Commissioner Starr to adopt Resolution #2007-33, a Resolution Urging Comprehensive Reform of the General Mining Law of 1872 and authorize signatures. Motion carried unanimously.

**COMMISSIONER MEETING REPORTS: (This item began early due to a schedule opening.)**

**Commissioner Swenson:**

1. RV Park Open House. Commissioner Swenson stated that both she and Chairperson Channell attended the open house and that it was a successful event.
2. Club 20. Commissioner Swenson reported her attendance at Club 20 on September 7-8, 2007. She also reported that every motion and resolution that originated from Art Goodtimes passed at 2-to-1 in the voting. She also stated that the Governor gave the key note speech on Saturday and that Representative John Salazar was also in attendance. Additionally, commissioners from Lake County and Routt County requested information pertinent to the Gunnison County Linkage Fee Program, so Commissioner Swenson requested that Gunnison County Housing Authority Executive Director Wise forward information to them.
3. Beautification/Scenic Corridors Committee. Commissioner Swenson reported that she met with committee member Sue Oates to discuss Ms. Oates' desire for additional control over the budget. Commissioner Swenson also reported that Ms. Oates and staff-appointee Assistant County Manager Crosby appear to be in disagreement related to the fundamentals of the committee. Commissioner Swenson asked for permission from the board to discuss this issue with Assistant County Manager Crosby. As well, possible policy changes will be suggested by Commissioner Swenson as part of a future agenda. Chairperson Channell and Commissioner Starr encouraged Commissioner Swenson to do so.

**WARRANTS & TRANSFERS:** Finance Director Linda Nienhueser presented monthly Warrants and Cash Transfers for discussion. **Moved** by Commissioner Starr, seconded by Commissioner Swenson to approve the Warrant Report dated September 18, 2007 in the amount of \$1,592,975.38. Motion carried unanimously. **Moved** by Commissioner Swenson, seconded by Commissioner Starr to approve the Cash Transfer Authorization for August 2007 in the amount of \$2,852,422.75. Motion carried unanimously.

**CONSERVATION EASEMENT TAX INCENTIVE:** **Moved** by Commissioner Swenson, seconded by Commissioner Starr to approve the Conservation Easement Tax Incentive letter to Senator Ken Salazar as amended and authorize signatures. Motion carried unanimously.

**GUNNISON VALLEY OBSERVATORY (GVO) UPDATE:** Senior Accountant and GVO board member Maureen Eden was present.

Senior Accountant Eden thanked the board for their efforts toward completion of this facility. She also reported that two recent observatory events were very successful and that the GVO is planning a total of 18 events for 2008.

Senior Accountant Eden stated that approximately \$6,000 was spent on the telescope mount and that the fork arm, reportedly the last major piece to be constructed, should be manufactured by the first week of

December. Board member Arthur Sweeney is anticipated to assemble the telescope components once they arrive in Gunnison.

Senior Accountant Eden stated that the GVO received \$3,800 from the Met-Rec board and \$500 from the Crested Butte Foundation Grant. Additionally, over \$10,000 was received in private donations this summer.

Senior Accountant Eden also reported that board reorganization may take place in the near future.

**BREAK:** This meeting recessed from 11:42 am until 1:15 pm in order to convene as the County Board of Equalization (see separate minutes), the Gunnison/Hinsdale Board of Human Services (see separate minutes) and to have lunch.

**PUBLIC HEARING – HIGH PLAINS STONE, SUSPENSION OR REVOCATION OF LUC #2003-68:**

Assistant County Attorney Tom Dill, County Attorney Baumgarten, engineering representative for the Public Works Department Allen Moores, Assistant County Manager Marlene Crosby, Assistant Planning Director Neal Starkebaum, County Paralegal Rachel Magruder, Colorado State Board of Land Commissioners Field Operations Manager Beverly Rave and High Plains Stone representative Scott Wagner were present for discussion.

Chairperson Channell opened the Public Hearing at 1:15 pm. Assistant County Attorney Dill confirmed proper notice of the hearing and recommended an executive session to discuss the process of this hearing and the legalities at issue. **Moved** by Commissioner Starr, seconded by Commissioner Swenson to go into executive session for the purposes set forth and with County Attorney David Baumgarten, County Manager Matthew Birnie, Assistant County Attorney Tom Dill, Assistant Planning Director Neal Starkebaum, engineering representative for the Public Works Department Allen Moores, Chairperson Hap Channell, Commissioner Paula Swenson and Commissioner Jim Starr. Motion carried unanimously.

The Board went into executive session at 1:16 pm. *Executive sessions of the Board of County Commissioners are conducted as per C.R.S. 24-6-402(4). This specific session was conducted as per C.R.S. 24-6-402(4)(b).*

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Attorney Statement Regarding Executive Session

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Date: \_\_\_\_\_

\_\_\_\_\_  
David Baumgarten  
Gunnison County Attorney

Chairperson Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402(2)(d.5)(II)(B), I attest that I am the Chairperson of the Gunnison County Board of Commissioners, that I attended all of the above referenced executive session, and that all of that executive session was confined to the topic authorized for discussion pursuant to C.R.S. 24-6-402(4).

Date: \_\_\_\_\_

\_\_\_\_\_  
Hap Channell, Chairperson  
Gunnison County Board of Commissioners

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The Board came out of executive session at 1:25 pm. Chairperson Channell confirmed that the executive session discussion remained on-topic; that all parties stated to be in attendance were, in fact, in attendance; and that no decisions were made.

Assistant Planning Director Starkebaum explained that the purpose of the hearing was to either suspend or revoke High Plains Stone Land Use Change No. 2003-68. He further stated that, pursuant to Section 16-106 of the Standards and Specifications for Road and Bridge Construction, this hearing is warranted due to credible evidence supplied to the Planning Department from Division of Wildlife (DOW) representative Matt Thorpe and neighboring property owner Eric Sorenson.

Assistant Planning Director Starkebaum further outlined the credible evidence as a DOW Report of Investigation, completed by Mr. Thorpe, detailing mining events as they occurred between June 9, 2007 and June 14, 2007 on the Tomichi Dome site. Additional credible evidence was supplied in the form of a letter from Mr. Sorenson accusing High Plains Stone of mining activity as early as June 6, 2007.

Assistant Planning Director Starkebaum explained that, in order to protect elk-calving activities in the area, the Planning Commission decision of July 2, 2004 outlined the following two conditions of approval:

1. Mining activities are limited to June 15<sup>th</sup> through September 15<sup>th</sup> of each year.
2. The applicant shall obtain an access permit from the Gunnison County Public Works Department and make any necessary improvements to that access from the Hot Springs Road to the storage area.

Assistant Planning Director Starkebaum further stated that improvements have been made to the access without the issuance of a permit. Additionally, he noted that the hearing date was extended from the original date at the request of the applicant.

Assistant County Attorney Dill confirmed all informational elements provided in the board packets. He then supplied additional material for inclusion into the permanent record in the form of two letters with the first addressed to Scott Wagner from engineering representative for the Public Works Department Moores, dated May 23, 2006, advising Mr. Wagner that driveway permit #493 had expired. The second letter, addressed to Scott Wagner from Assistant County Attorney Dill and dated September 6, 2007, confirmed the continuance of this hearing to today's date.

Engineering representative for the Public Works Department Moores provided the following chronology:

1. May 12, 2005 – Mr. Wagner originally applied for a driveway permit, immediately following the approval of his Land Use Change application.
2. May 23, 2006 – Mr. Wagner was informed that the driveway permit had expired, that the driveway must be completed per the terms of his Land Use Change approval and that he should contact the Public Works Department to request an extension. He was also informed that the permit would become null and void by June 23, 2006 in the absence of response.
3. July 24, 2007 – Mr. Wagner was informed that driveway permit #493 was null and void.

Assistant County Attorney Dill summarized the position of county staff to be that conditions set forth in the Land Use Change Permit had been violated per the credible evidence supplied.

Mr. Wagner contested engineering representative for the Public Works Department Moores' chronological account and claimed that he had set a meeting for the two of them to meet on June 15, 2005 at 10:00 am. He further provided a notarized letter from his daughter, Nichole Wagner, stating that she and her father waited until after 3:00 pm on June 15, 2005 for engineering representative for the Public Works Department Moores to attend the meeting and that they received no notice of the meeting being cancelled or postponed. Mr. Wagner also stated his impression that he had met all of the county requirements with regard to this Land Use Change approval since engineering representative for the Public Works Department Moores did not attend the meeting.

Mr. Wagner also argued that his actions cannot be defined as mining simply because he was, on June 6, 2007, cleaning and preparing for the upcoming mining season. Additionally, he stated that he was preparing for an inventory process via moving inventory to the staging area prior to his annual appraisal with the Colorado State Board of Land Commissioners (CSBLC).

Ms. Rave noted that she first became involved approximately one week prior to the hearing, during which time numerous conversations between herself, the DOW and Mr. Wagner had taken place. She also reported that she had performed three site visits, as well as individually meeting with Assistant Planning Director Starkebaum and representatives from the County Attorney David Baumgarten's office in order to discuss issues and ascertain authority. She also stated that revenues from this land benefit public schools and that she would like to see that continue.

Mr. Sorensen reported that the mining operations are under neighborhood scrutiny and that concrete barriers and rock piles had recently been moved. He further stated his belief that local residents would have protested the initial permit if they had been aware of a public hearing. Assistant County Attorney Dill provided a copy of the July 2, 2004 Planning Commission minutes, however Mr. Sorensen clarified his question to be whether or not a public hearing had occurred as led by the state and not the county. Ms. Rave stated that the lease was approved by the CSBLC during their meeting on March 17, 1998 and that on February 4, 1998, following her department's standard processes, a notice was sent by the CSBLC to the Board of Gunnison County Commissioners, the Bureau of Land Management, the United States Forest Service, the Division of Minerals and Geology, the DOW, the Colorado State Forest Service, the Natural Areas Program, the Division of Parks and Outdoor Recreation and the Natural Heritage Program. She further stated that she was not aware which county offices also receive notices, but that the information

is not standardly sent to land owners or the local newspapers. She did, however, state that persons can request to be added to a mailing list.

Mr. Sorensen questioned why the notice received by the board was not relayed to citizens. County Manager Birnie stated his belief that the entity holding the proceeding should be the entity responsible for public notice of the proceeding. County Attorney Baumgarten noted that the county can choose to request that the state change their notification procedures. Assistant County Manager Crosby stated her opinion that all future notices should be sent directly to the county manager's office.

Assistant Planning Director Starkebaum noted that, on February 12, 1998, the State of Colorado was informed that the Land Use Change Permit was required and yet not applied for, as evidenced by the materials provided by Ms. Rave during the hearing. Ms. Rave acknowledged this statement as truth and stated that leases are issued by her office prior to permits being awarded by individual counties, a process that she acknowledged has come under question.

Assistant Planning Director Starkebaum also stated the definition of mining, per Gunnison County Regulations, to include commercial development or extraction of mineral and construction materials, including underground mining, pit mining, strip mining, surface operations and any other construction associated with the mining operation. He further stated that no approval for any improvements to the storage area access was awarded by the county, yet improvements have been made.

Engineering representative for the Public Works Department Moores noted that he performed a site visit on September 17, 2007 and that the existence of sage-brush, which grows at a slow rate, suggests that improvements have not been made to the driveway that was created without a valid permit. Additionally, he reported that Mr. Wagner contacted the Public Works Department on approximately September 12, 2007 to request an immediate permit and that Mr. Wagner was informed that there was insufficient time for a permit to be issued prior to the hearing.

Engineering representative for the Public Works Department Moores reported that he had not received a copy of the necessary stormwater discharge permit, indicating the absence of this permit as required by the State Land Trust.

Engineering representative for the Public Works Department Moores also stated there was no scheduled meeting between himself and Mr. Wagner for June 15, 2005 as he informed Mr. Wagner that he would be unavailable to meet with him. Mr. Wagner stated that he has recently been unsuccessful in setting a meeting with engineering representative for the Public Works Department Moores. He further questioned why his company is the only entity that is not allowed access to this pre-existing driveway and Commissioner Swenson explained to him that commercial operations must follow different regulations.

Mr. Sorensen asked for an explanation pertinent to the placement of the cement barriers and Mr. Wagner stated that the barriers were placed in order to prevent public access to the land due to evidence of small campfires. Ms. Rave confirmed that all fires are prohibited on the parcel of land and that motorized vehicles are currently restricted to established roads, but that it would be more correct to state that motorized vehicles are restricted to designated roads. She further confirmed that the stand land board approved of the concrete blocks, but that those blocks will likely be removed in the future when stricter regulations are put in place for DOW enforcement. Mr. Sorensen stated his belief that the blocks will impede county efforts toward snow plowing and provided seven photos of the area that were entered into evidence by Assistant County Attorney Dill.

Commissioner Starr requested clarification from Mr. Wagner about his statement that a permit was issued for the road to which Mr. Wagner stated that he applied for a second access permit. Commissioner Swenson stated that the permit expired since the improvements were not made within the timeframe outlined in the permit. Assistant County Attorney Dill explained that the permit was issued conditional of improvements being made within 365 days, that those improvements were not made and that the permit has now expired.

Assistant County Attorney Dill reiterated the statements in Mr. Thorpe's report as proof of mining activity outside of the permissible timeframe. He further reiterated the stipulations within the Certificate of Minor Impact Approval as proof that Mr. Wagner was aware of his requirements and limitations.

Mr. Wagner stated his opinion that Mr. Thorpe's personal observations were at too great of a distance, thus rendering the observations as questionable. Mr. Wagner offered two staging-area photos into evidence and contended that staging does not equate to mining. He further stated that language within the Certificate of Minor Impact Approval is not clear with regard to operations versus mining. Chairperson Channell noted that semantics cannot be argued because the intent was clear.

Ms. Rave requested confirmation, based upon the dates outlined in the Certificate of Minor Impact Approval, that all removal activities must cease by October 1<sup>st</sup> of each year. Confirmation was provided by Assistant Planning Director Starkebaum. Commissioners Starr and Swenson further confirmed that mining activities and operations are allowable from June 15<sup>th</sup> to September 15<sup>th</sup> of each year and that

final removal of any product must occur prior to October 1<sup>st</sup> of each year. Engineering representative for the Public Works Department Moores stated that Mr. Wagner was given the opportunity to ask for clarification or modification of the Certificate of Minor Impact Approval prior to final agreement.

Chairperson Channell closed public hearing at 2:32 pm. He then immediately called the Board of Gunnison County Commissioners regular meeting back to order.

Commissioner Starr stated that violations appear to have occurred in two sections of the permit with the first violation being work not performed in the set timeframe and the second violation being work performed without a valid permit. He further stated his opinion that, since the dates were set to hold the least amount of interference with elk calving, the type of activity is irrelevant and that Mr. Wagner should not have been in the area whatsoever.

Commissioner Swenson agreed with Commissioner Starr's assessment of the violations. She also stated that proof exists showing Mr. Wagner was aware that his permit had expired and that activities occurred prior to June 15<sup>th</sup> of this year.

Chairperson Channell stated his agreement with the findings of Commissioner Starr and Commissioner Swenson. He also stated that seasonal-operation dates are clearly outlined and were adhered to until this calendar year, suggesting that Mr. Wagner was knowledgeable about the dates.

County Attorney Baumgarten stated his confidence in the State of Colorado's processes and assistance whether the permit is suspended or revoked. Engineering representative for the Public Works Department Moores expressed his opinion that a suspension penalty would not equate to the harsh penalty that this situation warranted. County Manager Birnie stated that revocation could cause undue work for the Planning Commission in order to begin the land use process from the start. Assistant County Manager Crosby supported a suspension because of the financial support to public schools and worried that support may be lost through the revocation process.

Commissioner Starr suggested giving general direction to the legal staff and the Public Works Department and to direct staff to determine the specific language for the permit suspension as follows:

1. The applicant is to obtain the permit necessary to complete the access work;
2. The access work is to be completed prior to any resumption of further mining operations;
3. In any event, no further mining operations will take place until June 15, 2008; and
4. The applicant shall pay fees and costs associated with this process.

County Attorney Baumgarten stated that Commissioner Starr's suggestions were sufficient to immediately proceed with action. He also stated that he held no confidence in what might be allowed to occur should the board decide to wait any longer. **Moved** by Commissioner Starr, seconded by Commissioner Swenson that the finding of this hearing board be that it has been demonstrated by credible evidence that conditions #1 and #6 of the Land Use Change No. 2003-68 have been violated and that, as a remedy for that violation, we suspend that Land Use Change Permit with the following five conditions:

1. That the operator obtains a county permit to complete the required access work;
2. That no mining operations, of any nature, be performed until the access work is completed and approved by the county;
3. That, in any event, there are no mining operations to be performed until at least June 15, 2008 and with the provision that this suspension of the permit has been formally lifted by this board;
4. That the operator pay the fees and costs incurred by the county to enforce the subject permit pursuant to Section 16-112(d) of the Land Use Resolution; and
5. That the pallets of rock and cement blocks, which are placed as of today at the intersection of the access road and County Road 887, be removed no later than 10/1/07.

Motion carried unanimously.

**SELF-CONTAINED BREATHING APPARATUS (SCBA) COMPLIANCE:** Airport Manager John DeVore and Assistant County Manager Crosby were present for discussion.

Airport Manager DeVore reported that the SCBA equipment in use at the airport was recently determined to be out-of-compliance, thus causing safety concerns. He also reported recently learning that the attached tanks are to be tested every five years while the regulators are to be flow-tested annually. Additionally, Airport Manager DeVore noted that applicable regulations may change as of October 1, 2007, but that this requested upgrade will not be affected by those regulation modifications.

Commissioner Swenson noted that, since the lack of compliance presents a safety issue, it will be considered appropriately; however she also reiterated previous statements made to Airport Manager DeVore relative to the need for a long-term plan from the airport. Airport Manager DeVore agreed and stated that, if this issue were not a potentially life-threatening issue, he would have waited to make this request during the budget cycle. **Moved** by Commissioner Swenson, seconded by Commissioner Starr

to approve appropriating up to \$20,000 to upgrade the Self-Contained Breathing Apparatus equipment at the airport to be in compliance. Motion carried unanimously.

**UNSCHEDULED CITIZENS:** Assistant County Manager Crosby stated that two citizens were present to speak during this time, however they could not remain since the meeting was running behind schedule. Assistant County Manager Crosby stated that she asked both of the citizens to call County Manager Birnie’s office in order to be given a scheduled time on the next agenda.

**COMMISSIONERS MEETING REPORTS (continued):** Due to the late hour, the board elected to suspend the remainder of the reports until the next meeting.

**ADJOURN:** Moved by Commissioner Swenson, seconded by Commissioner Starr to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 3:17 pm.

\_\_\_\_\_  
Hap Channell, Chairperson

\_\_\_\_\_  
Paula Swenson, Vice-Chairperson

\_\_\_\_\_  
Jim Starr, Commissioner

Minutes Prepared By:

\_\_\_\_\_  
Katherine Haase, Deputy County Clerk

Attest:

\_\_\_\_\_  
Stella Dominguez, County Clerk

**GUNNISON COUNTY BOARD OF COMMISSIONERS TEXT INCLUSION INTO MINUTES**

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO  
RESOLUTION NO: 2007-33

**A RESOLUTION URGING COMPREHENSIVE REFORM OF THE GENERAL MINING LAW OF 1872**

WHEREAS, the Board of County Commissioners of Gunnison County, Colorado is the local government of general jurisdiction in Gunnison County with the authority to plan for and regulate the use of land in unincorporated Gunnison County so as to provide orderly use of land and protection of the environment in a manner consistent with constitutional rights; and

WHEREAS, mining industry representatives, local governments, environmentalists, private landowners, recreationists, stockgrowers and others agree that provisions of the federal General Mining Law of 1872 are outdated, but to date Congress has not been able to accomplish comprehensive reform of the law; and

WHEREAS, a reliable domestic supply of minerals is essential to the nation’s economic and national security, and to our quality of life; and

WHEREAS, we need a national minerals policy that ensures a fair, predictable and efficient legal and regulatory climate that fosters production of minerals that are essential to our economy while protecting national, state and local socio-economic and environmental qualities; and

WHEREAS, many of the nation’s minerals are found on federal lands that comprise 38 percent of the combined land area of the 11 western states where most minerals and hardrock mining occurs; Gunnison County is comprised of approximately 85 percent federal lands; and

WHEREAS, reform of the General Mining Law of 1872 must recognize that there are some places that should not be mined (e.g. wilderness areas, water supply areas, areas of significant non-mining resource value); and

WHEREAS, the General Mining Law of 1872 contains no environmental protection provisions.

NOW THEREFORE, the Board of County Commissioners of the County of Gunnison, Colorado urges that The General Mining Law of 1872 be comprehensively reformed to create a federal regulatory regime that achieves sound economic, social and environmental objectives, and that:

- Fosters investments in carefully examined and monitored mineral exploration and development;
- Ensures permitting efficiency, including coordination of federal state and local authorities; and includes express recognition of local government regulatory authority;
- Provides for security of tenure by means other than permanent patenting to avoid conveyance of land for non-mining speculation and development;
- Assures fair financial return in exchange for use of federal lands;
- Requires operator provision of financial guarantees for impacts of all operations to public and private infrastructure and improvements, for avoidance and control of pollution, and for clean-up and reclamation;
- Requires operator provision of fees to fund fully adequate non-operator supervision and monitoring;
- Allows rejection of proposed mining activity that would result in substantial harm to environmental, socio-economic, historic, cultural, scientific or local community resources;
- Implements a fair-market-value royalty system similar to that used for other natural resources on public lands;
- Imposes a reclamation fee based on net proceeds of the mining activity and the reasonably anticipated scope and duration of reclamation;
- Facilitates a "national reserve" regimen for mineral resources essential to the nation's economic and national security;
- Removes unjustified tax subsidies for mining operations on public lands;
- Requires operator provision of financial security for post-operation/post-reclamation capital costs;
- Requires mining operators to meet certain outcome-based performance standards relating to all aspects of operations, including exploration, mining, processing, transport, and reclamation; These standards must:
  - Protect surface and groundwater quality from erosion and toxic discharge
  - Require landscape restoration concurrent with mining
  - Protect wildlife habitat
  - Minimize and neutralize mine wastes
  - Provide for public notice and an opportunity for public comment on proposed plans of operations and release of financial security
  - Strengthen administrative mechanisms for monitoring, inspecting and enforcing mining regulations

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO FURTHER RESOLVES to monitor and participate in the current Congressional consideration of bills, including H.R. 2262, to reform the General Mining Law of 1872.

INTRODUCED by Commissioner Swenson, seconded by Commissioner Starr, and adopted this 18<sup>th</sup> day of September, 2007.

Channell – yes; Starr – yes; Swenson – yes.