

**GUNNISON COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING MINUTES
September 25, 2007**

The September 25, 2007 Board of Commissioners meeting was held in the Commissioners Meeting Room at the Courthouse. Present were:

Hap Channell, Chairperson
Paula Swenson, Vice-Chairperson

Katherine Haase, Clerk to the Board
Others Present as Listed in Text

**PUBLIC HEARING
Appeal; Hidden Mine Ranch Land Use Change Permit No. 2006-25**

Chairperson Channell opened the Public Hearing at 1:09 pm and reminded all attendees that this hearing would focus only on access issues relevant to the 80-acre parcel in question. Commissioner Starr recused himself from the hearing. County Attorney David Baumgarten and engineering representative for the Public Works Department Allen Moores were available for discussion. Representing the defendant, attorney Art Tresize was present while attorney Robert Hoban of Frank & Finger, PC was available for participation via telephone. Representing the plaintiff, attorney Charles Cliggett of Cliggett & Associates, PC was present for discussion.

County Attorney Baumgarten confirmed proper public notice of the hearing pursuant to the Gunnison County Land Use Resolution (LUR), which included publication in the Gunnison Country Times, posting at the site and informing adjacent property owners via postal mail. Proof of public notice was provided by County Attorney Baumgarten and entered into the permanent record.

County Attorney Baumgarten reminded the board that the Whetstone Mountain Ranch Homeowner's Association submitted a letter, dated June 28, 2007, to Planning Director Joanne Williams challenging the Planning Commission's June 15, 2007 Hidden Mine Ranch Minor Impact Application approval. This evidentiary hearing was then scheduled during the August 8, 2007 Gunnison County Board of Commissioners regular meeting. County Attorney Baumgarten stated that the criteria upon which the board could base a decision was to either affirm, affirm with modifications or reverse the original decision of the Planning Commission. He further stated that the original decision could only be modified or reversed if the appellant establishes, by preponderance of the evidence, that there is no credible evidence in the record to support the original decision; if the original decision is found to be inconsistent with LUR requirements; or if the Planning Commission is determined to have exceeded its jurisdiction. Per County Attorney Baumgarten, once the board has made a decision on this matter, it cannot be subject to further appeal, however the decision will be subject to judicial review.

County Attorney Baumgarten outlined additional information received for possible inclusion into the permanent record. The first item was a notebook and cover letter, dated September 20, 2007, received from Cliggett & Associates, PC. The second item was a letter, with attachments, from attorney Thomas Dougherty of Rothgerber, Johnson & Lyons, LLP, also representing the plaintiff. These items were allowed into evidence.

Attorney Tresize stated that the 80-acre parcel was officially acquired by Hidden Mine Ranch in August and that, at no time, was this parcel owned by Trappers Crossing. He also stated that this 80-acre parcel does not have the benefit of easement or access to an open public road, which is required by the LUR. He further stated that Colorado case law indicates that access is not extended to adjoining properties merely because one of the properties enjoys access.

Attorney Tresize stated that no credible evidence exists, which is the burden of the plaintiff to provide, proving that this parcel has legal access. He further stated that his client, upon discovering this issue, was informed that the plaintiff knew of this issue and had not attempted to resolve it. Attorney Tresize also stated that total acreage has not been clearly identified and that the mutual easement agreement was vague in scope since the April 1990 deed, not recorded until January 2000, predates the agreement. Because of these issues, attorney Tresize requested that the Planning Commission decision be revoked and that the review process be reinitiated, a remedy offered through the LUR.

County Attorney Baumgarten acknowledged receipt of a Special Warranty Deed, recorded in Gunnison County on January 18, 2000 as record number 499145, from attorney Tresize and asked that it be added to the permanent file.

Attorney Cliggett presented a copy of the plat as approved by the Planning Commission after a 13-month period of investigation. Additionally, he stated that all parties in attendance at the property closing, which included the seller, the buyer and the title company, believed that the parcel was being conveyed to Hidden Mine Ranch and that it was later determined that a clerical error omitted the 80-acre parcel. Further, he stated that the previous owner has acknowledged the original intent of conveying the 80-acre parcel to Hidden Mine Ranch. Attorney Cliggett further stated that every parcel of land has a constitutional right to access and that this parcel is no exception.

Attorney Cliggett stated that proper procedures were followed utilizing the Planning Department and the Planning Commission and asked that the appeal to overturn the Planning Commission's decision be denied.

Attorney Tresize restated that documented legal access must be proven and that attorney Cliggett's argument for legal access did not constitute proof. He also restated that a resubmission of the application was warranted due to unanswered questions related to property title, access, and deed. Attorney Hoban reconfirmed that there was no proof of legal access.

County Attorney Baumgarten read aloud from the Planning Commission's decision document and quoted decision #15, "Approval of this application is subject to constraints or allowances of any recorded or other legal easement, as may be determined by a Court, or otherwise agreed upon in written and recorded form by the applicant and the easement grantor. Approval of this application does not imply that the County has made any determination as to the validity of any claim regarding any easement." He then interpreted the quote to mean that the Planning Commission was aware of the ongoing dispute over the easement parameters.

County Attorney Baumgarten also stated that the LUR requires impact analysis and that, in this case, the entire parcel was considered when the Planning Commission performed the impact analysis, including the 80-acre parcel.

Citizen Ted Colvin stated his impression that proper steps were not followed.

Commissioner Swenson stated her opinion that the Planning Commission did a thorough job evaluating the application. She also confirmed the existence of evidence that the process was followed, that there was a site visit and that the 80-acre parcel was evaluated. She further stated her belief that an error on the title does not make the Planning Commission's decision inconsistent with the LUR, that the Planning Commission did not act outside of their jurisdiction, that the Planning Commission addressed the access issue before making a decision and that the Planning Commission referenced this issue as condition #15 of their approval.

Chairperson Channell stated that there was credible evidence to support the Planning Commission's approval and that there was an assumption, on both sides of the transaction, that the 80-acre parcel was included in the sale. Further, he stated that the claim of inconsistency with the LUR was addressed as condition #15 of the Planning Commission's approval. He also stated that the Planning Commission did not exceed jurisdiction and that, in his opinion, the board would be incorrect if it did not uphold the Planning Commission's approval.

Attorney Tresize stated his opinion that the Planning Commission was not aware of the access dispute prior to making a decision. Chairperson Channell stated that the board could not address his claim since condition #15 placed that decision in the jurisdiction of the Court.

Attorney Tresize stated that the property deed does not specify legal access. Commissioner Swenson reiterated the language in condition #15 of the Planning Commission approval.

Attorney Hoban stated that the LUR requires the Planning Commission to ensure that all residential lots have legal access to a public road and that there is no evidence of such legal access. He also stated his opinion that it is the responsibility of the board to ensure that every property within the plat has legal access.

Chairperson Channell closed the hearing at 1:49 pm and immediately called the Board of County Commissioners Special Meeting to order.

County Attorney Baumgarten again outlined the three options available to the board as either to affirm, affirm with modifications or reverse the original decision of the Planning Commission. He also suggested that, if the board were to choose affirmation, that it do so as an independent determination. County Attorney Baumgarten also suggested that, if it is unclear that the affirmation of the Planning Commission's decision includes the 80-acre parcel, the board state the affirmation including the 80-acre parcel.

Moved by Commissioner Swenson, seconded by Chairperson Channell to affirm the decision of the Gunnison County Planning Commission for the Hidden Mine Ranch Land Use Change Permit #2006-25, including the 80-acre insert that has been discussed today. Motion carried.

ADJOURN: **Moved** by Commissioner Swenson, seconded by Chairperson Channell to adjourn the meeting. Motion carried. The meeting adjourned at 1:51 pm.

Hap Channell, Chairperson

Paula Swenson, Vice-Chairperson

Jim Starr, Commissioner

Minutes Prepared By:

Katherine Haase, Deputy County Clerk

Attest:

Stella Dominguez, County Clerk