

**GUNNISON COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING MINUTES
February 25, 2009**

The February 25, 2009 Board of Commissioners meeting was held in the Commissioner's Meeting Room at the Courthouse. Present were:

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

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

CALL TO ORDER: Chairperson Swenson called the meeting to order at 8:02 am. County Attorney David Baumgarten, Hard Rock Paving & Redi-Mix, Inc. representative John Paul Ary, Banks & Gesso, LLC representatives Paul Banks and Lisa Gonzales, property owner Gene Hollenbeck, attorney Luke J. Danielson, and property owner Scott Yates were present for discussion.

Chairperson Swenson also confirmed receipt of all information pertinent to this issue that had been submitted to date, which included all Planning Commission meeting minutes from June 6th through November 21st, and transcripts of all meetings except for July 11th. County staff provided a matrix that identified all standards in the Gunnison County Land Use Resolution (LUR) and all evidence that had previously been entered into the record.

Chairperson Swenson stated that the following additional items were received after Board packets had been prepared:

1. Correspondence dated 7/24/08 from the law offices of Luke J. Danielson.
2. Correspondence dated 1/26/09 from the law offices of Brownstein, Hyatt, Farber & Schreck.
3. Correspondence dated 2/10/09 from Gene Hollenbeck.
4. Email dated 2/17/09 to Assistant Public Works Director Allen Moores from Colorado Department of Transportation (CDOT) representative Devin Drayton.
5. Correspondence dated 2/18/09 from the law offices of Luke J. Danielson.
6. Correspondence dated 2/18/09 from Frank M. Coleman.
7. Correspondence dated 2/21/09 from Bill and Linda Chambliss.
8. Correspondence dated 2/23/09 from Banks & Gesso, LLC.
9. Two binders received 2/20/09 from the law offices of Luke J. Danielson.

County Attorney Baumgarten suggested that the above identified items be entered into the record, in addition to all written and oral information submitted to the Planning Commission. The Board agreed to include these items in the record.

PUBLIC HEARING; APPEAL OF GUNNISON COUNTY PLANNING COMMISSION DECISION; HARD ROCK PAVING & REDI-MIX, INC. REQUEST TO ADD PORTABLE BATCH PLANT TO THE EXISTING HOLLENBECK PIT; LOCATED APPROXIMATELY SIX (6) MILES EAST OF THE CITY OF GUNNISON, ONE-HALF (1/2) MILE SOUTH OF HIGHWAY 50, OFF OF COUNTY ROAD 52:

1. Public Notice Confirmation. County Attorney Baumgarten confirmed proper public notice.
2. Identify Ex Parte Communications. Chairperson Swenson stated that she had received email correspondence from Bill Chambliss requesting information that was later discussed via telephone. Mr. Chambliss requested clarification relative to a statement made by Chairperson Swenson suggesting that she preferred to hold this Public Hearing so that she would have all pertinent information available prior to casting her vote on the issue.
3. Staff Presentation. County Attorney Baumgarten felt that it would be appropriate for the applicant to make a presentation; however, he suggested that the Chairperson set time limits. Chairperson Swenson agreed that the discussion would be limited to new comments only and that 15-minute limits be set for the applicant, the response, and the public comment.
4. Applicant Presentation. Geologist Banks explained that the original Hollenbeck ranch had been divided into two portions of land; one being a 16-acre piece of land and another being a conservation easement. In February of 2008, a minor impact application was filed for this land, which has historically had an asphalt plant on site. The Planning Commission held three work sessions, a site visit, and five Public Hearing sessions. At the request of the Planning Commission, a traffic impact analysis, a visual impact computer simulation, company operating records, and violation records were supplied by the applicant. Soil sampling results, a drainage plan, a noise report, and MSDS sheets for all utilized chemicals were also submitted. A storm-water management plan was created and a discharge permit was issued.

Geologist Banks stated that representatives from his company had met with Gunnison Sage-grouse Conservation Coordinator Jim Cochran and a representative from the Division of Wildlife (DOW) to discuss Gunnison Sage-grouse issues. Similar meetings had occurred between his

company and the school district, fire district, County Public Works Department, and CDOT. The applicant agreed to sage-grouse mitigations, clean-up of the site, extensive berming and landscaping, containing site runoff, controlling dust, installation of a culvert on CR 42, and paying a fair share of any improvements needed at the intersection of Hwy 50 and CR 42.

Geologist Banks stated that the Planning Commission denied the application due to noncompliance and noncompatibility with the LUR, citing no specific reasons or portions of the LUR. He requested that the Board reverse the Planning Commission's decision based on the decision being inconsistent with the LUR. He reported that some neighbors had expressed concerns, but that the concerns were not supported by evidence.

Geologist Banks stated that the appraisal should not have been considered because it claimed that the land value would have been severely affected by the presence of an asphalt plant. During the Planning Commission's process, he provided similar studies based on sales prices for homes located near asphalt plants, but he felt that his testimony had been ignored. He stated that he had supplied a variety of supporting testimony, including that from a neighbor that had experience living in close proximity to an asphalt plant.

Geologist Banks stated that no specific issues were outlined within Findings #12 and #13 of the Planning Commission's decision. He also felt that specific issues and findings were not provided for odor, air quality or noise issues that would be applicable to LUR standards.

Geologist Banks stated that a traffic impact analysis had been completed, but that CDOT did not require any action since the additional traffic would not trigger the need for improvements at the intersection of CR 42 and Hwy 50. Traffic concerns were a stated reason for denial of the application, but he felt that he was not given sufficient time to present all information.

Geologist Banks stated that Finding #9 referred to a failure to fund the study; however, he contended that the study was voluntary.

Geologist Banks felt that the Planning Commission member who recused himself during the last Public Hearing due to conflict of interest should have instead recused himself at the beginning of the process as he could have provided negative comments during discussions.

5. BOCC Questions. There were no questions asked by the Board.
6. Public Comment. Attorney Danielson gave a PowerPoint presentation entitled, "Gunnison County Commissioners, February 25, 2009" for which he also supplied printed copies that were eight pages in length. He stated that the purpose of the LUR is to protect the heritage of our rural character. He went on to explain that the Yates' residential property is located in close proximity to the asphalt plant and that the appraiser was not able to locate many comparable properties that were this close to a plant.

Attorney Danielson expressed concerns related to traffic since all aggregate materials would be hauled in and out, passing through the residential area. He also expressed issues with regard to visual impacts as he did not feel that the proposed berm height would be sufficient; however, he felt that water and air quality were the most major of all concerns. He provided information relative to an inspection of the Hard Rock Paving site in Salida, Colorado on 10/11/2007 that indicated eight violations including failure to keep emission records for the preceding twelve months; failure to document startups, shutdowns or malfunctions; and failure to test and maintain pollution control equipment. A follow-up was completed on 7/9/2007, and another inspection was performed on 9/29/2008; the inspection performed on 9/29/2008 found further violations. Attorney Danielson stated his opinion that the Salida, Colorado plant would be the one chosen to relocate to the Hollenbeck property, and he expressed concern that half of the plant's capacity had been shown to be over five times the amount of allowed particulate matter.

Attorney Danielson requested that the Planning Commission decision be allowed to stand. He also asked that a binder of printed material be included into the record as he felt the material would prove the plant to be incompatible with the community's character. County Attorney Baumgarten read the material into the record and stated that the first page, of approximately 100 typed pages, was entitled, "Colorado Department of Public Health and Environment Air Pollution Control Division Stationary Sources Program", a Compliance Order and Assessment of Civil Penalty in the matter of A&S Construction Company.

Property owner Anne Hausler spoke in support of the Planning Commission's decision as she felt that Lost Miner Ranch embodies the values of the valley with people of all means residing on the ranch and up to 15 people working on the ranch at any given time. She felt that any application that could possibly put this part of the community at risk should be denied.

Resident Ralph E. Clark III, a.k.a. Butch Clark, requested that correspondence be entered into the record. County Attorney Baumgarten read the document into the record as a three-page document from Ralph E. Clark III and addressed to the Board. The title of the document was, "Comments for the Public Hearing concerning the appeal of the Planning Commission's decision regarding the placement of an asphalt batch plant at the Hollenbeck Gravel Pit by Hard Rock Paving and Redi-Mix, Inc."

Mr. Clark stated that the traffic count measured at the intersection of Hwy 50 and CR 42 provided vastly different figures than what CDOT provided. He felt that this significant difference in the amount of traffic might trigger the need for installation of turning lanes at the location. He also stated that many communities have experienced problems with particulate matter and odors. Because of this, he felt that the community should be involved in locating a place where a temporary asphalt plant can be placed.

Property owner Gary Hausler addressed the traffic issue by stating that a precedent had been set by the County during previous development reviews by deciding that a traffic study would not indicate a necessity for upgrades. He explained that, during another review, two traffic studies were completed that revealed much less traffic than has been revealed by this application; however, the prior original application would have required the installation of turn lanes at an approximate cost of \$250,000, so the plans had to be redesigned. Because of this, he felt that the precedent had been set that the applicant should bear the cost of needed improvements.

Resident Bill Chambliss explained that the applicant had stated that no evidence was submitted by the community; however, he offered information relative to the Varra Asphalt Plant. County Attorney Baumgarten entered two pages of photos, dated August 2007, into the record.

Mr. Chambliss also felt that the protective covenants were very important to this case as they were developed in the 1990's and may be outdated. He expressed concern related to the potential for high truck traffic going through the subdivision, not around it, as he felt this was an important consideration. He also expressed concern that the turn lanes could cost approximately \$1,500,000, and he questioned the credentials of the appraiser that was hired by the proponent. As well, he expressed concern that the permit was only for asphalt production while the proponent mentioned co-location aggregate extraction, which could indicate that the County had not yet collected enough information from the proponent about this application.

Resident Sandy Guerreri, speaking as an individual citizen and not as a member of any organization within the County, raised a concern about how many employees the Lost Miner Ranch had at any given time and how the Planning Commission evaluates an operation of that size as she did not feel that it would be fair for the Lost Miner Ranch to benefit from all residential or commercial agricultural uses. She felt that the Planning Commission needed to identify this in order to measure for compatibility.

Property owner Scott Yates submitted photos of the area and requested that they be entered into the permanent record. County Attorney Baumgarten entered this material as nine numbered photos generally depicting waterways, setbacks from waterways, and someone fishing. Mr. Yates explained that he had become part of this community approximately 25 years ago, primarily only during the summer months, and that he purchased the neighboring property for full-time use upon his retirement.

Mr. Yates stated that the proponent had argued the land value issue in the appeal. He felt that the Planning Commission performed well and he was appreciative that a site visit included a walk-thru of his property because of its close proximity. He noted that the photos were provided since the Board did not have the same opportunity for a site visit. Mr. Yates explained the enumerated photos as follows:

- Photo #1. This photo represented the view of Mr. Hollenbeck's pasture next to the road.
- Photo #2. This photo represented his building site, with the trailer in the photo being within 20 to 30 yards of the proposed plant site, and expressed his concern that the asphalt plant would threaten the property's water.
- Photo #3. This photo represented the holding pond that dumps into a culvert and releases onto the Hollenbeck property.
- Photo #4. This photo was taken from the County road directly in front of the entrance to the proposed asphalt site.
- Photo #5. This photo was taken to illustrate a fish that was caught below the culvert.
- Photo #6. This photo was also taken to show a fish that was caught below the culvert.
- Photo #7. This photo was taken approximately 50 yards upstream from the culvert.
- Photo #8. This photo was taken to illustrate that, while the use of berms had been proposed, there is no impact mitigation for the lots indicated in the photo.
- Photo #9. This photo was taken 25 feet below the gate looking eastward. Mr. Yates felt that this view demonstrated that the setback from the County Road could not be

mitigated by a berm, and that the view depicted would not exist if the asphalt plant were to be placed in the middle of the picture.

Mr. Yates felt that other less-threatening sites for the asphalt plant had been identified.

Appraiser Martin Froehlich stated that he had been hired by attorney Danielson to produce the report entered into the record. He felt that views would be the most tangible issue; however, he also felt that traffic and safety were important to discuss due to the trucks on the road. He noted that the example submitted by the proponent referenced a quarry in excess of 1.5 miles from the plant, which could not equally compare to Mr. Yates' scenario since his property was only 0.1 miles from the plant and would suffer from a much higher decrease in value.

Mr. Hausler stated his agreement with Ms. Guerreri's statements and noted that the difference between classification as a minor or a major impact relates to the option of alternative sites. He noted that multiple other sites are available for this project, such as Warren Wilcox's site, which he felt would be compatible. He agreed that the County needs a source for redi-mix and asphalt, but he felt that other sites should be considered.

Resident Steven Yates stated that he had been a resident of the County for 40 years. He felt that the conservation easement that Mr. Hollenbeck pursued was one method for preserving the local heritage and he applauded Mr. Hollenbeck for this effort. However, he felt that placing a batch plant in the middle of the conservation easement and the Lost Miner Ranch was ridiculous and improper.

Property owner Jerry Burgess stated that he resides at the Lost Miner Ranch full-time and that he appreciated the due diligence displayed by the Planning Commission and by the Board. He supported the Planning Commission's decision.

BREAK: The Public Hearing recessed at 9:35 until 9:45 am.

PUBLIC HEARING (continued):

7. Acknowledge Correspondence Received. No additional correspondence was received.
8. Applicant Response. Property owner Gene Hollenbeck expressed his opinion that Mr. Yates was proposing to build his residence too close to the plant site as the site pre-dated the subdivision. He added his opinion that the County may have approved building sites that were too close to the plant site. He felt that this location was appropriate because of its close proximity to the landfill.

Ms. Guerreri explained that she serves on the Ranchland Initiative Committee, that she has a conservation easement on her property, and that Mr. Hollenbeck had asked her to speak. She felt that the Planning Commission's notes may have indicated confusion on the part of the Planning Commission relevant to how covenant deed restricted easements are viewed. Mr. Hollenbeck stated that his easement was privately funded.

Geologist Banks noted that attorney Danielson had stated some inaccuracies regarding air quality violations at the plant in Salida. Ms. Gonzalez explained that the proponent had been working with the Colorado Department of Public Health and Environment (CDPHE) on the initial violations. She also stated that the violations were mainly ministerial in nature.

Mr. Ary restated that attorney Danielson's comments contained inaccuracies. He stated that the citations were relevant to the Salida facility, but that the facility would be going through an informal conference with CDPHE to analyze the accuracy and severity of the violations. One test will be an opacity test, which is not scientific.

Mr. Ary stated that a certified independent company was on site to perform independent testing when the CDPHE inspector, whom he felt was inexperienced, performed the formal inspection. He also explained that his company's processes were enforced by the State of Colorado and that the United plants operate in close proximity to a creek without contamination and without the mitigations that his company has agreed to. He stated his respect of pristine residential areas; however, he did not feel that Mr. Yates' property could be classified as such since it is adjacent to a gravel County road that leads to the landfill.

Geologist Banks requested additional information relevant to the County's policy on financial responsibility for road improvements since the intersection would be used by more than one party. He clarified that appraisals were not submitted, only reports and research that was not performed by an appraisal company, along with pictures of plants in close proximity to plants. He requested that the Board judge this application on its merits, not on whether or not another location exists.

Mr. Ary requested that alternate site locations be proposed if the plant would not be permitted in the proposed location; however, he noted that it may not be relevant for discussion since a permit could take months or years to come to fruition. He felt that his company had been portrayed as a large company, so he explained that his company is a small family-owned company that had been in existence since approximately 1968. He felt that the asphalt would be produced for this area only as it would not be cost-effective to export it.

Chairperson Swenson requested that Assistant Public Works Director Allen Moores address the issue of who would be responsible for road improvements. He explained that either Hard Rock Paving and Lost Miner Ranch, or Hard Rock Paving alone, should bear this cost since the road currently meets the standards and needs. He stated his responsibility to protect the County from assuming this cost if the issue were overlooked. County Attorney Baumgarten explained that the County does not have a generalized method of calculating responsibility; however, he suggested that the Board try not to retroactively affect old developments and, instead, decide on future applications with the County possibly assuming a portion of the cost. He also suggested that the entity funding the current application could be reimbursed by future users for their portion of the cost.

Geologist Banks explained that this application did not trigger lane improvements that would be mandated by CDOT.

Commissioner Channell questioned how the County could not consider retroactivity when also considering the landfill. County Attorney Baumgarten felt that the increase in number of trips per day to the landfill may only increase if the landfill were to expand and accept additional traffic. He also felt that a Local Improvement District may be applicable in this instance.

Commissioner Channell requested additional information about the height issues and questioned whether or not the Salida plant was proposed for relocation to this property. Mr. Ary explained that the plant will be over 45 feet, but that Assistant Planning Director Neal Starkebaum informed him that the height determination was not applicable since the plant would not be considered a building.

Commissioner Channell requested information relative to traffic counts since Mr. Clark alluded to inaccuracies. Mr. Clark explained that page 57 of the transcript indicated a total of 2,550 vehicles per day while information received from CDOT was identical to the information contained within the traffic study report; that being 3,200 vehicles going west from Hwy 114, and 4,800 vehicles at Adams Street. With these figures, Mr. Clark proposed that traffic levels are already high enough to trigger a turn lane requirement. Mr. Ary stated that his provided statistics were generated from CDOT's counter and that he could not explain the higher numbers. Mr. Clark requested that his information be entered into the record; however, it was found to already exist within the traffic report, date stamp 00152, page 174. Chairperson Swenson noted that, while a Planning Commission member may have misstated the information in the transcript, it does not change the transcript. Assistant Public Works Director Moores noted that CDOT may not have used classified counters for this study and that a project may have been active that could account for a spike in traffic. Because of this, he felt that a five-year or a 10-year average should be used.

Attorney Danielson stated that he had been requesting information pertinent to the plant chosen for relocation since June and that he had not received an answer from the proponent.

9. BOCC Decision. Chairperson Swenson closed the Public Hearing at 10:31 am and immediately reconvened the Board of County Commissioners Special Meeting.

Chairperson Swenson thanked everyone for their attendance, input and polite demeanor. She explained that the Board's responsibility in this appeal process, pursuant to LUR Section 8-103(c)3, the Board shall affirm, affirm with modifications, or reverse the Planning Commission's action, and that the Planning Commission's action could only be modified or reversed if the applicant established, by a preponderance of evidence, that there is: 1) There is no credible evidence in the record to support the Planning Commission's decision; or 2) The Planning Commission's decision was inconsistent with the applicable requirements of the LUR; or 3) The Planning Commission exceeded its jurisdiction or abused its discretion.

Chairperson Swenson noted that the applicant had previously indicated that the appeal was primarily based on an inconsistency with the LUR requirements; therefore she opted to suspend discussion on that issue until last.

Relevant to whether or not there was credible evidence in the record to support the Planning Commission's decision, Commissioner Starr felt that sufficient credible evidence was shown in the issue of traffic volume. He also felt that the findings could have been drafted in a way that would have shown

how the findings were reached, but that sufficient evidence was still within the record. He felt that the only evidence presented during the Public Hearing that may have brought potential conflict was the potential existing needs for turn lanes; however, he felt this would be a condition of the permit, if granted, as opposed to using it to either approve or deny the permit.

Commissioner Channell agreed that sufficient credible evidence existed. He also agreed that the findings could have been written better. As the Board also serves as the County Board of Equalization, he felt that the appraisal was questionable, but plausible, in suggesting the potential decrease in property value.

Chairperson Swenson agreed that enough evidence was present to support the credibility of the Planning Commission's findings.

Relevant to whether or not the Planning Commission exceeded its jurisdiction or abused its discretion, Chairperson Swenson acknowledged that a Planning Commission member recused himself at a late date; however, she felt that this member did not realize the potential conflict until the time of recusal, so she did not believe that discretion was abused or exceeded.

Commissioner Starr asked County Attorney Baumgarten whether or not the alleged actions of one Planning Commission member could rise to the level of abuse by the entire Planning Commission. County Attorney Baumgarten felt that Nick Lypps' recusal may not have been necessary and that he did not find anything within the documentation that would indicate an abuse of discretion by Mr. Lypps. Commissioner Starr did not feel that the Planning Commission exceeded or abused its discretion.

Commissioner Channell agreed that Mr. Lypps' recusal was the primary focus on the argument of inappropriate behavior. However, he did not feel that a conflict of interest existed and that Mr. Lypps' recusal was time specific to when it may have been necessary.

Relevant to whether or not the Planning Commission's decision was inconsistent with the requirements of the LUR, Chairperson Swenson felt that the Board needed to go through the Findings to decide whether or not each finding was tied to an applicable standard. The Board went through the Findings as follows:

- Finding #1. Chairperson Swenson stated that this factually described the Minor Impact Project.
- Finding #2. Chairperson Swenson confirmed that this was also an undisputed finding of fact.
- Finding #3. Chairperson Swenson explained the standard in LUR Section 9-404, page 9-24, for setbacks from natural water bodies mandated a distance of at least 100 feet, which was met so the Board agreed that this should not be a reason for denial of the application.
- Findings #4, #5 and #6. County Attorney Baumgarten felt that this would pertain to the compatibility of the neighborhood and suggested that the Board decide whether or not it can come to the same determination as the Planning Commission. Chairperson Swenson noted that Findings #5 and #6 also dealt with compatibility. County Attorney Baumgarten defined the standard of compatibility as being compatible with existing surrounding land uses while mining operations should not cause a significant net adverse impact upon existing developed areas.

BREAK: Commissioner Starr requested a short break. The meeting recessed from 10:58 until 11:07 am.

- Finding #4, #5 and #6 (continued). Commissioner Channell stated that he was conflicted on this issue since approval of the housing development may not have been compatible with pre-existing uses. He felt that a property buyer would have the responsibility of fact finding and that, in the transcript Mr. Yates claimed no knowledge of the asphalt plant. Commissioner Starr was also conflicted and felt that this application would be compatible since a pit and plant were located on the other side of the Lost Miner Ranch and the landfill. On the other hand, he did not want to establish sacrificial areas of land for industrial uses and proposed that perhaps impacts could be rotated via temporary portable plants. Given the history of this pit and the fact that no batch operations had occurred during the previous several years, he felt that the application was not compatible as residents would have no way of predicting a permanent asphalt operation. Chairperson Swenson felt that the historical use of the pit with an asphalt permit, along with Mr. Hollenbeck's intention that the pit continue and the fact that Mr. Yates and Ms. Hausler were aware of the pit and the possibility for asphalt batch operations, suggested that the application would be compatible. Commissioner Channell questioned whether or not the Board could reverse the Planning Commission's decision with modifications, but County Attorney Baumgarten explained that the application should rise or fall based on its own merits. Commissioner Channell also stated that he had to weigh traffic and Hwy 50 issues since he believed them to be compatibility issues. Commissioner Starr requested that this discussion be suspended until after the other findings had been discussed.
- Finding #7. Commissioner Starr felt that the County did not have enough information to decide on this Finding because of the conflict in CDOT traffic figures. He also felt that the issue of who would pay for improvements would be a matter for another hearing or deliberation. Chairperson Swenson agreed that the traffic issue was unresolved and would need to be resolved if the Planning Commission decision were reversed. Commissioner Channell felt that the only portion

of this issue left unresolved was who would pay for the improvements. The Board agreed with the finding that it was unresolved.

- Finding #8. Commissioner Channell stated that the appellant did not agree with the Planning Commission giving as much credence to the appraisal while other studies were not as highly evaluated. However, he still felt that property values would be negatively affected. Chairperson Swenson noted that Mr. Yates’ lot is within 400 feet of the plant, while the standard is to be at least 250 feet; however, there was no way to tell where the structure would be built within the building envelope. Commissioner Starr stated that the Board performed measurements on the provided map, which indicated that the building envelope was at least 800 feet from the plant. Since this Finding did not correlate to an LUR standard, it was agreed that it could not be used as a basis for denial of the application.
- Finding #9. Since this impact report was voluntary, it did not correlate to an LUR standard and was not relevant for denial of the application.
- Findings #10 and #11. County Attorney Baumgarten requested a motion for executive session between the Board, Planning Director Joanne Williams and himself regarding an interpretation of the relevant section of the LUR.

Moved by Commissioner Starr, seconded by Commissioner Channell to enter into an executive session regarding an interpretation of this section of the LUR with the Board, County Attorney Baumgarten, and Planning Director Joanne Williams in attendance. Motion carried unanimously. Due to the number of audience members in the boardroom, the participants of the executive session opted to leave the room instead of asking that the audience members leave.

The board went into executive session at 11:42 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.*

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: _____

Paula Swenson, Chairperson
Gunnison County Board of Commissioners

The Board came out of executive session at 11:57 am. Chairperson Swenson confirmed that the discussion remained on-topic, that all parties stated to be in attendance were, in fact, in attendance and that no decisions were made.

- Findings #10 and #11 (continued). Commissioner Starr stated that he evaluated the text due to the rule that text will prevail over illustrations or graphics, along with Section D which references private agreement, since contradictory situations may exist. The conflict arose from what the setback from the publicly dedicated conservation easement should be and whether the deed restriction on the Lost Miner Ranch was to be considered as a defined open-space dedication. Commissioner Starr did not feel that the Lost Miner Ranch deed restriction was to be considered as a defined open-space dedication since the deed restriction could be removed at any time. He felt that this Finding did not support the denial of the application since there was no LUR violation. Chairperson Swenson summarized by stating that the standard had been met.
- Finding #12. Commissioner Starr felt that this Finding was a compilation of everything that had already been discussed.
- Finding #13. This was deemed to be a compatibility issue and was therefore suspended until later in the discussion.

- Finding #14. County Attorney Baumgarten stated that the language in this Finding was routine and simply defined the record.
- Finding #15. Chairperson Swenson explained that this Finding allowed for future applications to be evaluated on their own merit.

Chairperson Swenson explained that traffic and compatibility issues were all that remained to be discussed.

Relevant to the compatibility issues, Commissioner Starr felt that the County had credible evidence and that the Planning Commission's decision was consistent with the LUR for reasons previously stated. Chairperson Swenson believed that the application was compatible with the neighborhood based on the testimony of residents, the historic use of the pit, the longevity of Mr. Hollenbeck's permit, the gravel permit being permitted, the possible inappropriateness of housing in this area, the income being used to continue agricultural operations, and the fact that Mr. Hollenbeck kept this portion of land out of the conservation easement in order to supplement his own ability to keep agricultural use viable in this community. Commissioner Channell did not agree with Chairperson Swenson's assessment as he did not feel that this operation would affect keeping agricultural uses in operation. He also acknowledged the historical use, but stated his preference to evaluate this application based on what the area is currently being used for. Commissioner Channell supported the Planning Commission's determination of compatibility.

Relevant to the traffic issues, the Board decided that this was a moot point. Commissioner Channell stated that any future applications would prompt an evaluation of the traffic issues. Commissioner Starr requested information about how traffic standards may apply to a temporary permit of only a couple of years; however, Assistant Public Works Director Moores could not provide an immediate answer.

County Attorney Baumgarten asked for confirmation that the Board wanted to affirm the Planning Commission action with the modification that Findings #3, #8, #9, #10, and #11 were not reasons for denial of the application. He also asked for confirmation that the Board wanted to emphatically state that the compatibility of this permit in this configuration for this duration is a reason for denial, but that it is not a precedent on another application for a different configuration or duration. **Moved** by Commissioner Starr, seconded by Commissioner Channell to uphold the Planning Commission decision with those stipulations that the County Attorney set forth on the record previously, so we are affirming the decision with modifications. Motion carried. Chairperson Swenson voted against the motion.

Commissioner Channell thanked all participants for their input. He also reminded everyone that the traffic issue could potentially become an issue in the future and that durations would need to be evaluated in any future applications.

Commissioner Starr thanked the Planning Commission for the time and commitment displayed on this issue, the staff, the applicants for their patience with the process, and the citizens who provided comment.

Chairperson Swenson also thanked County Paralegal Rachel Magruder and County Paralegal Angela Buchanan for assembling the information submitted into the record.

ADJOURN: **Moved** by Commissioner Channell, seconded by Commissioner Starr to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 12:21 pm.

Paula Swenson, Chairperson

Jim Starr, Vice-Chairperson

Hap Channell, Commissioner

Minutes Prepared By:

Katherine Haase, Deputy County Clerk

Attest:

Stella Dominguez, County Clerk