

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS
PUBLIC HEARING MINUTES
August 25, 2009**

The August 25, 2009 Gunnison County Board of County Commissioners meeting was held in the Gunnison County Board of County Commissioners' boardroom in the Gunnison County Courthouse located at 200 E. Virginia, Gunnison, Colorado. Present were:

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

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

CALL TO ORDER: Chairperson Swenson called the meeting to order at 1:00 pm.

BREAK: The meeting recessed from 1:00 until 2:19 pm in order to hold the below Public Hearing.

PUBLIC HEARING; CONCERNING ADOPTION OF AMENDMENTS AND MINISTERIAL CHANGES TO THE *GUNNISON COUNTY SPECIAL DEVELOPMENT PROJECT REGULATIONS (TO BE KNOWN AS THE GUNNISON COUNTY SPECIAL DEVELOPMENT PROJECT RESOLUTION)*: Planning Director Joanne Williams, County Attorney David Baumgarten and attorney Barbara Green were present for discussion.

1. Open Public Hearing. Chairperson Swenson opened the Public Hearing at 1:00 pm.
2. Public Notice Confirmation. County Attorney Baumgarten confirmed that proper public notice had occurred and that all prerequisites had been completed.
3. Identify Ex Parte Communications. Commissioner Channell informed the Board that he had met with Crested Butte Mountain Resort (CBMR) Planning Director John Sale a couple of weeks ago, during which time this topic was casually discussed.
4. Staff Presentation. County Attorney Baumgarten stated that there was no need to go over all details of this process again since the Board members had all participated individually and collectively in all other relevant meetings leading up to this Public Hearing. He also explained that the current document, Draft #5, included four large iterations. Clean copies of Draft #5 were supplied to the Board.
5. Applicant Presentation. There was no applicant in this matter.
6. Board Questions. Commissioner Channell requested information relative to Section 4-104B; however attorney Green explained that the reference to Section C2 was a typo. This was corrected to refer to Section 4-104B2. All parties agreed with this change.
7. Public Comments. Before opening the floor to public comments, Chairperson Swenson noted that comments were received regarding carbon neutrality via correspondence from the Thompson Creek Metals Company. County Attorney Baumgarten confirmed that Draft #5 honored the Planning Commission's opinion to recognize carbon neutrality within the document. He also noted that no one had yet fully defined carbon neutrality and that creation of an offset program within Gunnison County could take considerable time. He felt that Draft #5 was defensible and that the method(s) for reaching carbon neutrality would be up to an applicant's discretion. Attorney Green explained that one definition for carbon neutrality existed on page 18 of Draft #5.

Chairperson Swenson stated that the correspondence also mentioned the appeals procedure. Attorney Green expanded on this statement by explaining that the correspondence referred to an opportunity for dispute resolution that could come up during the process. She noted that the Planning Director would have the opportunity to make decisions during the process and that, if the Planning Director made a finding during a pre-application conference that a standard did not apply to that project, then that finding would be included in the staff report. Further disputes would be deferred to the County Attorney and then to the Board of County Commissioners, in that order. Attorney Green also noted that there would no longer be a separate Planning Commission process. Instead, the process will be completed jointly by the Planning Commission and the Board of County Commissioners.

Chairperson Swenson acknowledged receipt of correspondence from USDA Forest Service Supervisor Charlie Richmond that would also be addressed during the Public Hearing.

Chairperson Swenson opened the floor to public comment at 1:15 pm.

CBMR Director of Real Estate and Sales Michael Kraatz stated that CBMR had previously provided comments, as recently as April 2009, relative to Draft #4. He noted that most of those comments were still relevant to Draft #5. He submitted a comment summary letter and stated that CBMR was in overall agreement with the proposed regulation; however, CBMR does not believe that the resolution is appropriate to review recreational development on public lands. He felt that the proposed resolution appropriately recognized that the County's authority is different for public lands, but that it inappropriately gives the County the authority to veto permissions granted by the Forest Service.

County Attorney David Baumgarten requested that the 4/20/09 correspondence from the Thompson Creek Metals Company, which included an attachment that referenced other attachments, be included into the record. As well, he requested that a two-page facsimile received on 8/24/09 from the Forest Service, and an undated piece of correspondence from CBMR Director of Real Estate and Sales Kraatz be entered into the record.

CBMR Director of Real Estate and Sales Kraatz stated that CBMR would prefer that the County incorporate the National Environmental Policy Act (NEPA) into the review process to the maximum extent possible.

CBMR Planning Director Sale stated that carbon neutrality is too wide of a term to accomplish. As well, he felt that this language insertion with potentially far-reaching implications was a last-minute injection that had occurred without appropriate review. He confirmed that CBMR is supportive of the County's efforts to reduce its carbon footprint. However, if implemented in this instance, he felt that carbon neutrality should be a component of all County land-use changes. Lastly, he stated that CBMR would support a change in terminology to carbon "reduction" as a carbon-neutrality standard may be impossible to achieve by any entity.

Resident Butch Clark complimented the County for what he considered to be an extraordinary job of producing a draft document that will be a model for other communities to follow. However, he felt that large projects will require the capacity for emergency response, such as during an explosion. To achieve this, he suggested emphasis be placed on the joint-review process.

Resident Butch Clark felt that dissemination of information would be much cheaper and easier if the information were accessible on the internet. He also urged the development of County monitoring capabilities for issues such as the economic impact to governmental agencies.

Resident Butch Clark felt that it would be important to define how amenities would be financed and how off-site impacts would be mitigated for the addition of communities such as the man-camp proposals of 2,500 to 3,000 people for the Union Park or Taylor Park areas. He felt that impacted entities should be included in the planning process.

Relative to carbon neutrality, Resident Butch Clark felt that it could be useful to establish a gathering of useful information and data that could be used in evaluating proponent proposals for financial and functional feasibility.

Resident Maureen Hall stated her hope that the County would not scale back any jurisdictional oversight for large developments, whether on public or private land, in Gunnison County as she felt that the impacts could be enormous for citizens. She urged adoption of a resolution that included safeguards for citizens.

Office for Resource Efficiency (ORE) representative Andris Zobs stated that ORE would prefer that the County minimally retain the reporting requirements if the carbon neutrality standard is deemed ambiguous and, therefore, deleted from the resolution.

Resident Rich Karas stated that the County had adopted a strategy to reduce carbon emissions and that this principle must include demanding carbon neutrality of large developments in order to keep those developments from negatively affecting the County's residents. He also noted that the County's Green Team was in the process of addressing the issues outlined by CBMR. With regard to regulating development on public lands, he felt that the basic philosophy of the proposed regulation is to regulate impacts to County residents that may be caused by special development projects on private or public lands.

Planning Commissioner Ramon Reed stated that the portion of the draft relevant to carbon neutrality was heavily debated within the Planning Commission. He urged the Board to discuss this issue thoroughly before adoption of the resolution in order to determine the best way in which to achieve the desired goal. He did not feel that the draft language was good enough for adoption.

Planning Commissioner Reed noted that the County does not have authority within the municipalities and opined that it should clearly be stated that the County does not want this

authority. At the same time, he felt that the County must consider impacts within the municipalities. For example, he felt that expansion of the ski area would impact Crested Butte and Mt. Crested Butte and that, without agreement between the County and the municipalities, the County would be forced to ignore those impacts. He urged crafting those agreements as soon as possible.

Planning Commissioner Reed did not feel as though enough information was presented to fully explain the necessity for this resolution. He used the Union Park area as an example as the proposed mapping of pipelines leading from the reservoir resembled spider legs. He noted that the project was defeated in water court after spending millions of dollars and that the outcome was not known for quite some time. Had the project passed the water court, the SDPR process would have been the only way to preempt the project. He felt as though citizens should remember that the degree of impact felt by the community is much more significant than the size of the project. He also stated that NEPA only considers the environmental impacts on federal lands.

Resident Sandy Shea agreed with the comments made relative to off-site impacts because he felt that Environmental Impact Statements (EIS) rarely address potential off-site impacts that are of grave concern to community members. He urged the County to protect the citizens of the County by evaluating the off-site impacts, especially because the County Attorney's office felt that this resolution was appropriate.

Resident Vicki Shaw spoke on behalf of the Friends of Snodgrass Mountain and asked that the County retain the carbon neutrality language. She also requested that the language granting the Board authority to regulate projects on federal lands be retained in the document. She felt that the federal EIS process would study a lot of information, but that the County's process should go into more detail to include the social and economic views of the impacts. Relative to ski-area expansions, she noted that the federal government has never denied an expansion on federal lands. She thanked everyone for their work on the document and asked that it be adopted.

Resident Clark stated his opinion that the adopted document should specifically allow the County to respond to other entities that may be evaluating projects. He also felt, while hazardous materials were referenced in the document, that hazardous emissions should also be addressed. He felt that land exchanges should be closely reviewed and that the term "feasibility" needed further refinement. As well, he felt that any development's capacity to succeed should be evaluated. He thanked the Board for addressing areas that perform scientific research, such as the Rocky Mountain Biological Laboratory. Lastly, he felt that the information for each specific application should be developed within the community before receiving outside input so that the knowledge base within the community is developed and utilized.

Crested Butte Mountain Resort attorney Mike Dawson noted that, during the pre-application phase, the County was supposed to identify portions of the resolution that can be preempted. He requested confidentiality and preemption analysis information.

8. Acknowledge Correspondence Received. No additional correspondence was identified.
9. Applicant Response. There was no applicant present to give a response.

Commissioner Starr requested further information relative to recreational development on federal lands and CBMR Director of Real Estate and Sales Kraatz explained that CBMR was referencing the supremacy clause.

Commissioner Channell requested clarification relative to the pre-application conference information and attorney Green explained that the Planning Director would have the authority to evaluate all aspects of the project and then to decide if any of those aspects were not applicable. She also explained that this would not prevent anyone, at any time, from addressing the County Attorney or the Board as preemption would be an option during any point in the process. County Attorney Baumgarten stated that the law of preemption is a fluid law.

Commissioner Starr asked for information from the Planning Commission members that were present. In particular, he questioned the language of reduction vs. neutrality. Resident Karas (who serves as a Planning Commission member, but preferred to speak as an individual citizen), reiterated his earlier comments related to the County's goals. He also felt that large projects must be regulated for neutrality and not just a reduction to ensure that the rest of the County would not have to bear the burden of large projects. He felt that the language was vague enough in nature as to allow objectives to be achieved in many ways because he felt that the method for achieving neutrality should be presented by the applicant and then judged by the Board.

CBMR Planning Director Sale noted that neutrality was not defined and would need some sort of structure and understanding of how the goals would and could be reached.

10. Close Public Hearing. Chairperson Swenson closed the Public Hearing at 2:14 pm and immediately reconvened the Gunnison County Board of County Commissioners Meeting.

Office for Resource Efficiency representative Andris Zobs stated that the Energy Action Plan referenced specific sources for emissions. He felt that the same scope of impacts that were utilized during the emissions inventory could also be used for this purpose.

Commissioner Channell noted that he relied on the legal staff to evaluate issues such as preemption and statutory authority and that the information and opinions presented to the Board from the legal staff made good sense. However, he noted that he would prefer that the carbon neutrality issue be further discussed. Commissioner Starr agreed that further conversations were necessary.

Chairperson Swenson felt that the County could either revert to the original language referring to County policy, and then refine the policy, or suspend adoption of the document in order to have additional conversations. County Attorney Baumgarten felt that the document could be adopted as presented, with the understanding that the language could be amended periodically.

Commissioner Starr felt that adoption of the resolution immediately would be the fairest approach to current applicants.

Commissioner Channell agreed that the adoption process should continue, but was not comfortable with the current language. He noted that the emissions inventory data was based on current emissions, which could be reduced, but that complete neutrality is not being required of any other processes within the County. He was leery of adopting regulations with language that the County is not currently requiring of other projects, large or small. If adopted, he felt that it should be adopted for all projects as a County policy. He suggested adopting language that would reference current County standards and then refining the County standards.

Chairperson Swenson and Commissioner Starr agreed that policies should be crafted and that the County should not set different standards for different projects. County Attorney Baumgarten felt that the County could accomplish this and attorney Green requested permission to fix ministerial errors within the document.

The document was scheduled for final review and adoption on 9/1/09.

ADJOURN: Moved by Commissioner Channell, seconded by Commissioner Starr to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 2:28 pm.

Paula Swenson, Chairperson

Jim Starr, Vice-Chairperson

Hap Channell, Commissioner

Minutes Prepared By:

Katherine Haase, Deputy County Clerk

Attest:

Stella Dominguez, County Clerk