

**GUNNISON COUNTY BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
Wednesday, June 6, 2024**

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The Gunnison County Board of Adjustment conducted a regular meeting in the Planning Commission Meeting Room in the Blackstock Government Center, 221 N. Wisconsin, Gunnison, Co. and on Zoom

**Present:**

Chairperson-Laura Puckett Daniels Vice-Chairperson- Liz Smith BOCC – Jonathan Houck Board of Adjustment Member – Andy Tocke Board of Adjustment Member – Juile Baca	Assistant County Manager for Community and Economic Development-Cathie Pagano Planning Director – Hillary Seminick Building and Environmental Health Official-Crystal Lambert County Attorney – Matthew Hoyt Deputy County Attorney – Alex San Filippo-Rosser Planning Technician – Jena Greene Others present as listed in text
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**Absent:** None

**Recused:** None

**Zoom:** Juile Baca

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With a quorum present Chair Laura Puckett Daniels opened the June 6, 2024, meeting of the Board of Adjustment at 1:30 pm.

**Approval of the Minutes:**

Smith made a motion to approve the May 22, 2024, Board of Adjustment minutes with the insubstantial change as noted by Tocke. Seconded by Houck. The motion passed unanimously in support.

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**Unscheduled Citizens** - None

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**Public Hearing: APPEAL-24-00003 | McCloud Placer LLC.**

Puckett Daniels wanted it on the record that it was brought to her attention that Fink had donated to her election campaign.

Houck also wanted to add to the record that he had been approached twice outside of the meeting (by John Norton and Dave Wines) and both times stated that he couldn't speak to the topic outside of the hearing and encouraged them to look into attending the Continued Public Hearing if they wanted to comment.

Smith had received an email from Celeste Helminski wanting to discuss the matter, to which Smith replied that she couldn't discuss the matter outside of the meeting. This correspondence was already a part of the record.

The appellant clarified that since they had supplied an affidavit from Sam Dagenhart the previous day that they were not planning to have him present. The appellant had planned a short recap presentation, then to have their code expert respond to the County's arguments from the previous meeting, followed by comments from Fink in response to the previous meeting and conclusion by Spivey. The BOA determined this to be appropriate, but decided to resume the public hearing with questions by the review body.

#### Questions by Review Body

Smith sought clarification from Silvestro and the Gunnison County Attorney regarding the admissibility of new information presented in a recent memo from Gunnison County Staff. Silvestro argued that pages 1-12 and 33-35 of this memo contained new information that should not be considered. Smith specified that the content of these pages contained: an email chronology (pages 1-6), a supplemental legal analysis (pages 7-12), and the decision-making body record from the April 23rd hearing (pages 33-35); and further noted that she found the legal analysis helpful.

Silvestro maintained that the BOA should focus solely on whether the notices issued on December 28th and January 11th were appropriate, without considering the new arguments and evidence presented after the stop orders. The appellant claimed the county did not respond promptly to constitutional claims about the fairness of the process, which were submitted on January 19th, with the county replying only two weeks before the hearing.

Smith asked the Gunnison County Attorney if the BOA could rule on due process and constitutional rights issues. The attorney confirmed that they could, citing case law that supported the BOA's authority to determine if the Building Code and Land Use Regulations (LUR) were unconstitutional as applied by the staff.

Puckett Daniels stated that the BOA had anticipated further arguments from the appellant, who had been cut off due to timing at the end of the last public hearing, but none were received.

Puckett Daniels directed questions to Sam Dagenhart and legal counsel, Kevin McAdam, as well as Fink, to clarify details of the affidavit signed by Dagenhart, relationships among LLCs, and the specifics of property management and associated services

Puckett Daniels asked about the origin of the name "Campfire McCloud LLC" to which Dagenhart explained that the name was derived from the mining claim as well as the legal description for the parcel. Dagenhart clarified that Fink was not a member of his company. Smith inquired whether "owner" referred to Fink or Campfire LLC. Dagenhart clarified it referred to McCloud Placer LLC, and helped to keep accounting straight. Smith also asked if Fink owned any other LLCs. Dagenhart explained that there were different LLCs for each property that Campfire Ranch Manages. Smith asked Fink why Campfire Ranch was chosen to manage the property. Fink responded that it was one of the few companies he liked and that he felt could manage a property such as this one. The relationship between Dagenhart and Campfire Ranch was discussed, with Smith asking about Dagenhart's roles in other LLCs as a manager, investor, or owner. The nature of the contract with Campfire Ranch was for property

maintenance services, and that Fink and Dagenhart were friends. Fink clarified there was no compensation for sales activities directly or indirectly.

The Campfire Ranch website referred only to Irwin guides but had no exclusive relationship with them. It was noted that there was only one other qualified guide service available. If someone booked guiding services, they could book through Campfire and pay campfire; or they could book them on their own and pay the guide service.

The snowmobile shuttle services were offered for a fee to transport equipment to the property, although this service had not been utilized yet. They had not secured a permit with the forest service. The selling of guidebooks on the property was discussed.

Dagenhart confirmed that campfire collected the 4% local marketing district tax and remitted it. The marketing of the property was discussed. It was confirmed that Fink and Dagenhart discussed how the property was marketed, and did provide ideas and input regarding how the property was marketed, including reviewing and offering feedback on marketing materials.

The Outdoor Magazine 2024 award was discussed. Fink stated that he consented to pictures and videos being used of the property for this award, and for other marketing purposes.

The Family Supper Event was discussed. Fink stated that he was not compensated for the use of the property for the event. Dagenhart stated that the fee was charged through Campfire Ranch, but that he did not make any money on the event.

Smith asked at what point property management services would be considered commercial under the Land Use Regulations (LUR) definition. The definition of "commercial" and "resort" was read. emphasized that Campfire Ranch was not argued to be a commercial business under LUR. The services provided were for guests, not marketed as commercial activities to the property itself. The appellant pointed out that other short-term rental businesses, such as Alpine Getaways or Iron Horse, provided similar services.

Puckett Daniels recapped, noting that the appellant appealing the issuance of the notification of violation of the building code related to a change of use or occupancy from December 28, 2023, and the issuance of a stop order for the operation of a commercial resort from January 11<sup>th</sup>, 2024. Additionally, the appellant asserted violations of due process rights and equal protection rights.

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#### Public Comment

John Norton, representing TAAP. Commented that he hoped they were looking for a win-win.

Close Public Comment, thanked the audience for submitting comment in advance.

## Appellant Response

Spivey identified material issues raised during the session, including the procedural fairness of the county staff's decisions. Silvestro added that the BOA's role was to determine if county staff abused their discretion in revoking the Certificate of Occupancy (CO) and issuing a stop work order, focusing on procedural fairness.

Spivey then introduced code expert, Gil Rossmiller. Rossmiller began his construction career in 1975 and became a field inspector in 1994. He served as the Chief Building Official for Parker, Colorado, from 2003 to 2016 and is currently employed with Shaun's Code Associates. He has been involved in code development from 2009 through 2024.

Regarding code compliance, Rossmiller stated that a property built under the 1994 UBC should first be evaluated under that code. He noted that there are no occupant or duration limits for rentals under the 1994 UBC. He affirmed that part-time owner use and short-term rental (STR) would still be classified as R3 and that there would be no change of use or occupancy under the 1994 UBC or the 2021 IRC for part-time rentals.

Rossmiller clarified that the property in question would be governed by the 2021 IRC, not the 2021 IBC, under current codes. He emphasized that there are no limits on occupants or rental duration under the 2021 IRC.

He addressed the concept of transient occupancy, explaining that the 1994 UBC did not account for it, as the concept was introduced later. He argued that STR use does not change the classification under the 1994 UBC or the 2021 IRC. The primary use of the property as a dwelling remains regardless of rental status.

Finally, Rossmiller confirmed that the 1994 UBC and the 2021 IRC do not address furniture arrangements, including the presence of bunk beds.

Rossmiller concluded that the property maintains its R3 classification and does not require reclassification or additional compliance based on its use as an STR.

Drew Fink spoke next for the appellant. He expressed frustration with the lack of clarification from county staff regarding violations and permissible activities under the R3 occupancy classification. He noted it took five months to receive a list of activities deemed commercial and still lacks clear guidance on what is not allowed.

Fink raised several key questions, seeking clarification on whether short-term renting is prohibited under various building codes, including the 1994 UBC, 2015 IRC, and 2021 IRC. He questioned the relevance of transient use if nightly rentals are allowed and asked if the county applies a test of primary use to other short-term rentals regarding occupancy changes.

Fink pointed out that no structural issues have been cited for non-compliance, only usage-related concerns. He asked for specific actions not allowed under the 1994 UBC R3 designation and questioned if legal rights change based on seasonal accessibility, such as during snowfall.

He challenged the classification of activities as commercial, arguing that recreational access cannot make a home commercial. He questioned if other properties with similar recreational access are being similarly scrutinized.

Fink asked whether providing services like a gear shuttle or advertising for family retreats constitutes commercial activity. He emphasized that the services provided by his property management are similar to those offered by other property managers in the county.

Fink inquired about the county's enforcement consistency, asking if other property managers offering similar services have received violation notices. He requested clarification on what differentiates his property from other short-term rentals and why he was uniquely targeted for enforcement.

Fink concluded by highlighting that building and land use codes are intended to provide order and structure, not to create unreasonable constraints. He asked for a final clarification: could he personally use his home personally with his family of 7.

Spivey concluded the appellant response, stating that county's contention was that the property's use had shifted from residential to commercial, necessitating compliance with commercial building code standards (International Building Code - IBC) instead of residential ones (1990 Uniform Building Code - UBC or 2021 updates). However, the property in question was a three-bedroom single-family home, occasionally rented out as a short-term rental, not a hotel or hostel.

Spivey argued that activities like hiring guides or chefs, or using the home for social media promotions, did not alter the fundamental residential use of the property. Guests used the home as a group, similar to a family, without the commercial aspects of separate room rentals to unrelated individuals.

Regarding the county's concerns about transitory use, Spivey contested that applying commercial building standards to all short-term rentals would set a precedent affecting every such property in Gunnison County. Spivey highlighted that the property management company, Campfire, used modern, social media-savvy marketing strategies to target specific demographics. However, similar properties managed by traditional companies did not face the same scrutiny despite similar uses and rental methods.

In summer, the property's use aligned with other short-term rentals, but in winter, access required skiing or snowshoeing, which the county viewed as a commercial activity. Spivey argued that this was a normal characteristic of rentals, not a commercial operation.

Specific activities such as shuttling, brand experiences, hosting groups, weddings, and video shoots were common in other rentals and did not constitute commercial operations. Methods like featuring the property in magazines were standard advertising practices and did not alter the property's residential use.

Spivey stated that the County was attempting to regulate short-term rentals indirectly rather than through direct, authorized means as per Colorado law (CRS 30-15401), which implied the county must pass specific regulations to control these aspects, something it had not done.

In conclusion, Spivey requested that the Board of Adjustments reverse the county's notice of violation for change of use under the 2015 IBC and the stop order for operating a commercial resort, arguing that both actions exceed the county's jurisdiction and discretion.

### Staff

Lambert expressed frustration regarding multiple building codes and the lack of clear engagement with property owners to resolve compliance issues efficiently and emphasized the importance of understanding specific code applications, such as the International Building Code (IBC) and International Residential Code (IRC), particularly concerning occupancy and safety regulations. Lambert mentioned that the International Existing Building Code (IEBC) was relevant for existing structures undergoing changes in occupancy and clarified misunderstandings about whether commercial building codes applied.

Pagano highlighted the importance of achieving compliance while supporting property goals, mentioning their approach to use existing building codes effectively. Pagano also noted that Ross Miller expressed opinions in his testimony but didn't actually cite any code.

Staff addressed concerns about issuing notices of violation, stressing the need for thoroughness and formal communication due to past experiences. Lambert explained the action of suspending the certificate of occupancy, stating that it was temporary and aimed at addressing specific safety concerns related to fuel gas heaters. The CO reinstated once the appellants came into compliance. Lambert emphasized that the CO was never revoked, just suspended.

Seminick discussed the approach to violations related to short-term rentals, noting the importance of compliance with septic and building codes. She denied allegations of targeting specific individuals or properties, citing the objective review process based on property use representations, such as those seen on social media.

In conclusion, staff underscored their commitment to public safety and compliance, expressing willingness to work with the property owners. Pagano stated that a "win-win" could be achieved through compliance with the septic system and applying for land use change application for minor impact for a commercial use.

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### Discussion/Questions

Baca questioned Rossmiller about determining occupant load for septic systems based on bedrooms and bed counts, referencing the 1994 building code. Rossmiller clarified that Regulation 43 specifies how septic sizes are determined by the number of rooms and beds, suggesting it wasn't unreasonable to consider bunk beds for these calculations. Spivey noted that while occupancy was discussed, the septic system itself wasn't addressed in detail.

It was highlighted that Gunnison County lacks a specific review body for septic issues, but it was clarified that this review body did exist - the Environmental Health Board.

Houck raised concerns about the ventless heater noting that it was an issue regardless of the building code year. Lambert confirmed that exceeding occupancy limits, such as hosting a

slumber party with 12 people, could constitute a violation under county guidelines. However, that was not how the code was applied or how violations were enforced. In that situation, the county would not be issuing a violation. The issue at hand was due to the continued use by 12 people.

Houck asked Fink how interpreted the violation concerning him being unable to use the property ever again. Fink explained that to comply meant that he could never have more than 6 people in the home, and his family was 7 people; and that he couldn't rent the home without providing access to recreation, which was being considered a commercial use. Therefore, he couldn't comply and be able to rent out the home. Cited letter, exhibit 44.

Lambert stated that the property could still be used as an STR with an occupancy limit of six people.

Questions were raised about whether properties with compliance issues could still operate as short-term rentals and if occupancy limits would apply. The consensus was that health and safety concerns persisted regardless of use type, and occupancy limits were necessary for compliance.

Discussions extended to procedural fairness, and the perceived responsiveness of county officials to property owners. Legal memos and arguments were reviewed regarding claims of procedural missteps and the exhaustion of administrative remedies.

Due to lack of new public comment, members expressed they felt comfortable closing the public hearing.

Smith made a motion to close the public hearing. Second by Baca. Motion passed unanimously in support.

### Board Deliberation

The board considered whether the county's actions were justified, if due process rights were upheld, and if the appellant was treated fairly compared to others in similar situations. They reviewed evidence and legal arguments extensively before making decisions on these complex issues.

Members deliberated on several key issues: whether there was a change in property use, the application of commercial use standards, constitutional rights related to due process, and the interpretation of building codes. There wasn't support for making a decision regarding "claim splitting" regarding procedural fairness.

Puckett Daniels stated that the BOA had five things to decide on: 1) Did the change of use/occupancy letter exceed jurisdiction? 2) Was the claim of resort use which prompted a stop order made with no credible evidence. 3) Were there no previous opportunities to be heard. 4) Was the appellant singled out. 5) Was the county's position two pieces of the due process claim, look back to the record.

Since the time was past 5pm, the BOA determined to continue the meeting. There was no need to public notice, which could help to expedite the process. Determined that the BOA would meet on Tuesday, June 25<sup>th</sup> at 1:30 pm to deliberate and render a decision.

Meeting Adjourned at 5:08 pm.

DRAFT