

**FEBRUARY 5, 2007**  
**PROCEEDINGS OF THE GARFIELD COUNTY BOARD OF COMMISSIONERS**  
**GARFIELD COUNTY, COLORADO**

The regular meeting of the Board of County Commissioners began at 8:00 A.M. on Monday, February 5, 2007 with Chairman John Martin and Commissioners Tresi Houpt and Larry McCown present. Also present were County Manager Ed Green, Assistant County Manager Jesse Smith, County Attorney Don DeFord, Carolyn Dahlgren and Jean Alberico Clerk & Recorder.

**CALL TO ORDER**

Chairman Martin called the meeting to order at 8:00 A.M.

**PUBLIC COMMENTS FROM CITIZENS NOT ON THE AGENDA**

Louis Butner, a Land Surveyor and here about a client on Missouri Heights, Adrian Crouch. She has hired me to clear up some clouds on her title that affect the marketability of her property. In my research I have come up with several items that involve County staff and asked if he might have ½ hour of non-public meeting time with the Commission to discuss these problems as they involve county staff.

Chairman Martin – must keep all sessions open except for Executive Session.

Louis – it involves staff and requested this be in a non-published setting; he may not be accurate in the identification of County departments.

Chairman Martin said as individuals they could sit and talk to him about the issue but we can't as a board meet with him except in a public setting.

Louis is willing to come and talk to anyone and everyone within certain guidelines.

Don – Mr. Butner and Ms. Crouch have had a number of communications with the planning department, some of which have been referred to his office and it has been several weeks if not a few months since the last communications and discussions on this. Don and Fred have discussed this and Fred was to supposed to communicate to Mr. Butner and Ms. Crouch that we needed to have a clear statement of what relief they were seeking from the County. One of the problems with that is part of that relief may involve a public hearing i.e. such as an exemption request. Fred hasn't brought that request directly to his office and therefore not aware if this has been accomplished.

Louis – initially communicated with the County Attorney's office trying to give you folks a heads up to discuss the legal ramifications involved. Since that time another issue has come up namely a road right of way deed of which I can not determine if it was a fee title granting or if it was an easement granting. Also, with the local survey control that easement or right of way is un-localable. The local control was set by the County surveyor.

Don – what Mr. Butner is discussing now is one among a number of issues that were raised but as I just noted, the correspondence Don and his department reviewed did not propose any solutions for those issues and did seek legal advice and other than direction from the County. And as you know we don't normally provide that, we ask that the landowner propose a remedy. That is what was communicated.

Louis – who should I communicate these remedies to?

Don – Mr. Jarman.

Louis – he makes the legal issues or he just fronts for the Commissioners?

Don – Mr. Jarman is the director of building and planning department and if you have an issue on land use or a course of action you wish to follow on the use of land, then it is his department that is for initially addressing it.

Commissioner Houpt – then Mr. DeFord would work with him on the legal issues for the County and then bring it to us if it's a Commission issue.

Louis – I last communicated with Mr. Jarman asking to open a dialogue with him and that's been 30-days ago and I have had no response.

Don – again, a dialogue is really not necessarily how we want to proceed, we want to know how you want to proceed and then we'll address your proposed remedies.

Louis – Okay, I'll give you a complete – outline or the documentation.

Don – not sure how you want to precede, more than likely we'll need both.

Ed – does it need to be in the form in the letter request?

Don – yes outlining how you want to proceed to solve the issues that are raised and if you have supporting documents and you've given us a lot already, but if there are other supporting documents, I would submit those as well. Then we can address how you form your request. Louis – I have not received any response except from basically two departments and their response was inadequate.

Don informed Fred, who just arrived of the conversation and what would be needed.

Louis – that is satisfactory at this time.

**COUNTY MANAGER UPDATE – ED GREEN**

• ***DOLA Contract for Justice Center – Randy Withee***

Randy submitted the request stating that in October 2006 staff presented the County's request for DOLA funding to the Energy and Mineral Impact Assistance Advisory Committee in support for the construction of a new courthouse in Rifle. In November 2006, staff received notification from the executive director of DOLA that he concurred with the committee's recommendation of providing funding of \$600,000 and would enter into a contract for the grant. Rifle received \$1M.

Recommendation: Staff recommends the BOCC authorize the Chair to sign a contract with the State of Colorado as presented.

Commissioner McCown – so moved; Seconded by Commissioner Houpt.

IGA – McCown – no direct relevance

Ed – City wants to proceed on the common area.

Don – in relationship of the DOLA Grant, a reminder that this grant appropriately runs to the end of 2007. Will it need renewal or will we complete the portion for which the grant is dependent by the end of the year.

Randy – basic indication is when they go to the end of the year and then we request extensions and it always happens.

In favor: Houpt – aye McCown – aye Martin - aye

Ed noted that the City does want to proceed.

- ***Consideration and approval of Child Advocacy Center Purchase of Service Agreement and Lease Agreement with Childhelp, Inc – Debbie Quinn and Lynn Renick***

Debbie and Lynn were present and submitted the Purchase of Service Agreement for discussion and approval. Previous discussions were held with the BOCC regarding the lease agreement with Childhelp and various other aspects of the agreement. This document includes those stipulations made by the Commissioners.

A floor plan and architectural rendering of the site plan for the new Child Advocacy Center was submitted as Exhibit A.

Exhibit A-2 demonstrated approval of plaques and naming rights for the River Bridge, A Childhelp Center would be recognized. The River Bridge requested consideration for a bridge or brick walkway outside the building that could have donor's names carved into the slats of the bridge or the brick walkway. Included in the packet is the year ending balance 6-30-2008 as well as the estimated total to furnish and equip all rooms in the Center.

A motion was made by Commissioner Houpt and seconded by Commissioner McCown to approve the Lease Agreement with Childhelp, Inc with the Board of County Commissioners and Child Help.

In favor: Houpt – aye McCown – aye Martin – aye

***Approval of Child Advocacy Center Purchase of Service Agreement***

Commissioner Houpt made a motion to approve the Child Advocacy Center Purchase of Services Agreement and the Chair be authorized to sign. Commissioner McCown seconded. In favor: Houpt – aye McCown – aye Martin – aye.

- ***Out of State Travel for Steve Aurand – Lynn Renick***

Lynn submitted the request for Steve to travel for the purpose of attending the National Conference for Fatherhood and Families as it relates to the new program development in Garfield County. Lynn has previously mentioned the Fatherhood Initiative in her reports to the Board. The total amount requested is \$1,202.20 and Lynn stated she had travel money in her budget for 2007 to cover these expenses.

A motion was made by Commissioner Houpt and seconded by Commissioner McCown to approve the out of state travel for Steve Aurand in an amount not to exceed \$1,202.20.

In favor: Houpt – aye McCown – aye Martin - aye

- ***Authorize the Chairman to sign an amended water lease – Mike Vander Pol***

Mike requested the Chair to be authorized to sign the amended water lease for the West Divide Conservancy District for the purpose of dust suppression.

Last year we used 8 acre feet and this year we are increasing the amount to 20 feet.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to

In favor: Houpt – aye McCown – aye Martin - aye

- ***Request for approval for two additional members for the Human Services Commission***

Ed submitted two letters, one from Cindy Webb representing Columbine Home Health and Kathryn Grosscup representing a co-membership with Geneva Powell of Garfield County Housing Authority. The purpose for this dual membership representation is to attend meetings held both in Rifle and Glenwood Springs.

A motion was made by Commissioner Houpt and seconded by Commissioner McCown to add the two new human service commission members – Cindy Webb and Kathryn Grosscup.

In favor: Houpt – aye McCown – aye Martin - aye

- ***Discussion of Scholarship Award in Civics for Outstanding Student – Dale Hancock***

Dale said this is the culmination of a 3-day discussion. At the FAA conference they realized the lack of this opportunity – based on phone calls and inquiries – the disconnection between the roles of government and students. The proposal includes students in the RE1, RE2 and District 16. The award would be for a week spent in Washington to see government in action.

Commissioner Houpt – nice concept but not sure about spending public funds; government should volunteer in the schools. It's in our schools and she has spoken to numerous classes.

Dale – not pure civics.

Commissioner Houpt – not on its own – a lot of worthy reasons to give scholarships but

Ed – it was a scholarship program

Chairman Martin – referenced the summit in Denver, Colorado regarding understanding American Government.

Directors said they are lacking in civics and need to reinstitute. Public funds have been contributed to Mock Trails and have sent kids out of state and civics is so important; we need to be leaders and help our students understand how government works. It is not taught in schools except in a history class.

Commissioner Houpt – agreed this is an important effort but would like to note that if we do look at giving money we need to reach more students. She would want to be a part of a brainstorm activity and in conjunction with the school.

Dale – a conceptual thing and the dollars would not put a hardship on the budget.

Commissioner Houpt – haven't seen a dollar amount or an outline.

Dale – schools have been notified and suggested to wait.

Chairman Martin suggested that Tresie give us your ideas.

- ***Request to pay PDO Buyout – Patsy Hernandez***

As previously directed by the Commissioners, Patsy submitted the PDO balances for the employees affected by the buy-out of unused vacation time due to the amount of hours established in the Personnel Policies and Procedures that an individual employee can carry forward yearly. The total amount for the buyout is \$6,823.90.

Patsy requested that the Board authorize the Payroll staff to add these amounts to the February paychecks or Human Resources staff to add to the deferred compensation plan for those employees who select this option.

Ed said the numbers go down each year.

Commissioner McCown – so moved. Seconded by Commissioner Houpt.

Patsy will review the list and submit something to their supervisor to watch this.

The Board did approve to have this next year as well.

In favor: Houpt – aye McCown – aye Martin - aye

- ***Procure a F-350 with utility body and crane including trade for a cost of \$42,032 – Marvin Stephens***

Tim Arnett and Marvin Stephens submitted the four responsive bids received for the One Ton Dually with Utility Body & Crane for the Landfill. The recommended award is to Glenwood Ford for a cost after the trade in the amount of \$42,032.00.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to approve the purchase of the Dually with Utility Body & Crane for the Landfill not to exceed \$42,032.00.

In favor: Houpt – aye McCown – aye Martin - aye

- ***Award a contract for Phase II Hydrogeologic Study – Jesse Smith***

Tim Arnett and Jesse Smith submitted the Phase II Scope of Work to perform the baseline water quality studies in the Mamm Creek Field Area in Garfield County. The primary objective is to identify domestic water wells or springs within the study area where water quality analyses indicate that the drinking water may not meet State or Federal primary or secondary drinking water standards or have excessive methane or sodium chloride concentrations. The Phase II Hydrogeologic Study Flow Chart will be conducted in three tasks: Task 1 would conduct an analysis of the updated COGCC Database of the domestic water wells located in the Phase I and II study areas and identify the potential problem water wells exceeding the drinking water standards. Task 2 would collect produced water samples for analysis from gas wells near water wells with two or more analyses confirming sodium chloride and solutes of concern. Task 3 would identify water wells with water quality data exceeding health standards and notify landowners (notification by Garfield County). Identify water wells and gas wells with similar geochemical signatures and notify the COGCC (notification by Garfield County). They will prepare a final report encompassing results and analysis.

The evaluation team consisting of Jesse Smith, Geoff Thyne and Michael Matheson recommend awarding the proposal for Phase II Hydrogeological Characterization Study to S. S. Papadopoulos & Associates, Inc.

Jesse also reviewed this choice with the COGCC and they were also pleased.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to approve the award for Phase II of the Hydrogeological Characterization Study to S.S. Papadopoulos & Associates, Inc.

Don noted the funding would be discussed later on the agenda.

In favor: Houpt – aye McCown – aye Martin - aye

- ***Authorization for County Manager to sign agreement for services with the Waters Consulting Group, Inc.***

Ed submitted this was to assist us in finding the appropriate purchase of service agreement for the new Human Resources position. Waters Consulting Group is located in Dallas Texas and provides services to clients across the nation in the field of wage and salary system development, performance management, executive search and other human resource areas. The purchase of services agreement was submitted and a request was made for the Chair to authorize Ed Green to sign the contract in the amount not to exceed \$28,000.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to approve the consulting agreement with Waters Consulting Group, Inc. not to exceed \$28,000.

In favor: Houpt – aye McCown – aye Martin - aye

***Ex. Session – PEIS for Oil Shale and change to an ordinance. Ed's request.***

#### **COUNTY ATTORNEY UPDATE – DON DEFORD**

- ***A. Consideration/authorization of Chair to execute Consent and Estoppel to Collateral Assignment of Land Lease between Senior Housing Corp and CHFA***

Commissioner Houpt - recused herself due to the work that Jeff has done on this project.

Don stated the Board would remember this discussion took place toward the end of last year and the Board made a motion to grant the \$50,000 “bridge” grant to ensure that the construction can go forward with the renovation of the Club 60 space that had been used for food preparation and that the remodel would entail one 2-bedroom and 1-bedroom, 3 additional residential units would be provided and that it be written in the contract that if this money is not needed to complete this project that it would be returned to Garfield County and would be replaced in the source which it came – out of Human Services or out of the general fund. Neither Ed nor Patsy was present and this was to be determined later.

Don submitted a plat that depicts the number of changes that were made to this document. He called attention to page 5 of the Estoppel agreement.

A motion was made by Commissioner McCown and seconded by Commissioner Martin to authorize the Chair to sign the consent and Estoppel to the collateral assignment of land lease between the Senior Housing Corp and CHAFA.

In favor: Houpt – aye McCown – aye Martin - aye

- ***B. Consideration/approval of 2007 Lease (office space) Lower Valley Trails Group (LoVA)***

Larry Dragon and Don DeFord were present.

Don submitted the lease for space at the Henry Building in Rifle for the term January 1, 2007 to December 31, 2007 for the LoVa Group for an amount of \$3710.00. He requested the Chair to be authorized to sign the lease.

A motion was made by Commissioner Houpt seconded by Commissioner McCown.

In favor: Houpt – aye McCown – aye Martin - aye

- ***C. Consideration/approval of 2007 Purchase of Services Agreement – Lower Valley Trails Group (LoVA)***

Don submitted the purchase of services agreement with LoVA to provide long range planning services for an amount not to exceed \$43,710.00 and requested the Chair be authorized to sign the agreement.

A motion was made by Commissioner Houpt and seconded by Commissioner McCown.

In favor: Houpt – aye McCown – aye Martin - aye

- ***D. Consideration/approval of 2007 MOU – South Canyon Trail – Lower Valley Trails (LoVA)***

Don presented the Memorandum of Understanding for the South Canyon Trail development as previously approved.

This is the 2007 matching grant to be paid to LoVA in the amount of \$50,000. The contract contains the standard language and requested the Chair be authorized to sign the MOU.

Jesse asked if the Board was aware that fiber optics to be placed under the trail was proposed. His understanding of this is that Glenwood is planning to lay it to complete their fiber optic system all the way to Rifle.

This was a complete surprise to the Board and to Larry Dragon as well.

Don also hasn't heard anything about this and it is something that we could work on but it needs to be done before we do construction. The other thing is in talking to Jeff Nelson or the SGM; they owe me a redlined version of the contract before it goes out to proposals.

Commissioner McCown said being a separate utility going in that corridor, that would have to go all the way back to feds on allowing that.

Larry Dragon – the reason we haven't gone out to bid is the federal highways now. Larry will talk to Jeff and the City.

Ed asked if we need to have an agreement for the \$240,000 or whatever we are going to pay in engineering costs for this. Or is this part of the project costs.

Don – thinks it is part of the project costs – its part of the CDOT agreement.

Larry Dragon said the amount was based on what the engineering costs would be but didn't think it was being specifically used for that – the County has been billing them throughout this year.

Don – suggested Larry mention this to SGM and Jeff that the CDOT agreement may need to be renewed however because we are now in a new fiscal year for the County. It's not for the state but it is for us part of the agreement and suggested to Jeff this may need to be renewed.

A motion was made by Commissioner Houpt and seconded by Commissioner McCown.

In favor: Houpt – aye McCown – aye Martin - aye

- ***E. Consideration/appointment of legal counsel for Board of Adjustment***

Don this is after the fact; during the hiatus in Board meetings we had a Board of Adjustment Meeting and an item came up in which Carolyn and Fred believe that separate counsel was needed because of potential conflicts between the CA's office advising the planning department and then the necessity of providing the Board of Adjustment as in the past we retained Steve Carter.

Commissioner McCown asked if this would remain during the course of the year.

Don would like to do this.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt that Steve Carter be appointed as the legal counsel for Board of Adjustments for the year or 2007.

In case there is a conflict where Steve Carter would be involved, we will go elsewhere.

In favor: Houpt – aye McCown – aye Martin - aye

- ***G. Consideration/approval of MOU regarding Performance of Public Projects in Lieu of Fines (Order Nos. IV-297 and IV-298) with COGCC and EnCana***

Don submitted the new MOU and explained the purpose was to enter into an agreement with COGCC and EnCana as previously discussed in a public hearing held on March 20, 2006 where the COGCC approved its staff to approve public projects in lieu of part or all of the fines under the Administrative Orders by Consent (AOC's). The parties agree that EnCana shall expend no more than \$178,000 on public projects pursuant to this MOU. Garfield County agrees to be responsible for any expenditures on public projects undertaken pursuant to this MOU that exceed \$176,800 that are no otherwise covered by a balance remaining under that certain MOU executed by the Parties in March 2005 related to the contamination of the Dietrich and Amos wells.

Don requested the BOCC approve the MOU as presented and authorize the Chair to sign.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt

In favor: Houpt – aye McCown – aye Martin - aye

- ***H. Consideration/approval of Supplement to MOU regarding Performance of Public Projects (Order No. IV-276) with COGCC, EnCana, Western Colorado Congress and Grand Valley Citizens Alliance***

Don submitted the supplement to the MOU regarding the performance of public projects discussed in public hearings July 2005 and August 2006 and the COGCC approved Phase II and Phase III of the Hydrogeologic Study.

The parties agree that EnCana shall expend the balance of the fine related to these projects to the terms as provided in the Supplemental and MOU.

Commissioner Houpt – asked Jesse if when he referred something to COGCC, the owner will also be notified. She feels they should under any circumstances.

Jesse – if there is a concern we would notify the landowner – we would say based on our testing you should obtain an independent test on your well. The landowner makes the decision.

Commissioner Houpt – also wants the landowner contacted at the same time. Make sure that if the COGCC is alerted, so is the landowner.

Jesse agreed this was in the language.

In favor: Houpt – aye McCown – aye Martin – aye

- ***I. Consideration/approval of MOU with BLM re: EIS for the respective Resource Management Plans***

This Memorandum of Understanding (MOU) sets forth roles and responsibilities for Cooperating Agencies as agreed to between Garfield County and the Glenwood Springs Field Office (GSFO) and the Kremmling Field Office (KFO) of the Bureau of Land Management (BLM) for the purposes of collaborative planning and productions of an Environmental Impact Statement (EIS) for the respective Resource Management Plans (RMP).

Garfield County has requested, and the BLM has agreed, to grant Cooperating Agency Status pursuant to 40 CFR 1501.6, 1501.2, and 1501.8. Under these regulations, the BLM recognizes that Garfield County has both jurisdictional responsibilities and special expertise as it relates to many aspects of the planning efforts described above.

Garfield County responsibilities:

Garfield County has both jurisdictional responsibilities and special expertise in many arenas related to planning and is responsible for the following;

They will participate in the planning process.

They will be assisting BLM in the identification of issues and concerns to be addressed in the planning effort.

They will provide relevant data, which may assist in the RMP revision/EIS process.

They will review and provide comment within scheduled deadlines of receipt of preliminary baseline reports or other technical reports where Garfield County has provided data or other such information in order to complete the report.

They will review and provide comments within scheduled deadlines of receipt of the following sections of the preliminary draft EIS.

- Preliminary range of alternatives to be considered in detail
- Relevant portions of the “Affected Environment” section (including the socio-economic section).
- Relevant portions of the “Environmental Consequences” section.
- Relevant portions of the “Consultation and Coordination” section including information on consistency reviews.

During public review periods for the Draft EIS, provide the BLM a consolidated comprehensive review of the Draft EIS.

Garfield County will assist the BLM in analyzing and reviewing public comments/data and work with BLM in the Development of proposed final RMP/EIS.

Each entity agrees to fund its own expenses associated with this planning process.

This agreement becomes effective upon signature by all parties.

Don – needs the BOCC to authorize the signature and also designate Jesse.

Commissioner Houpt – important for Fred, Jesse and the BOCC to respond – a process that happens in a timely way and Don as well – be tightly informed on the documents to be sent to the COGCC. Would it be Ed, Fred?

Chairman Martin – all 3 Commissioners should be notified.

Don – could put the 3 Commissioner, but if we do that, a quorum would be needed and Jean would need to attend to make the record, versus one Commissioner. That individual can speak as authorized, before an agreement, then the Board would have to discuss with the other two. One person is all that is necessary.

Commissioner Houpt – in the past we have had the Board involved – that kept all of us in the loop.

Commissioner Houpt would like to be involved in this.

Commissioner McCown reminded Tresi that he is the one on the Northwest RAC – evidently you have no confidence in him if you want to chime in for the meetings.

Commissioner Houpt – it’s not a matter of confidence or to be involved on a larger scale. Chairman Martin – we have appointed Larry and we know that we all can participate however the final decision will be made at this Board meeting. Larry has been the representative and has always reported to the full Board what is taking place.

Commissioner McCown explained that for a scale of economy they chose to combine the Kremmling and the Glenwood study the areas, there will be people all the way from Grand County, all of that area.

Commissioner Houpt – this wouldn’t prohibit all of us from being at these meetings.

Commissioner McCown – absolutely not, just as long as we notify Jean.

Commissioner Houpt – well, if we’re making decision, otherwise –

Commissioner McCown – anytime there is a quorum, I think whether there’s decisions made or not, we need to notify Jean.

Don – back to the oil shale Cooperative Agreement that we did treat them as meetings. That’s how we do it. So for the very reason you could make decisions if you chose to do so.

Commissioner Houpt – I’m sure there will be meetings where I at least will also want to attend.

Commissioner McCown – just alert Jean when you’re coming to those meetings and we will be covered. I think John’s motion is lacking a second, so I will second it.

Chairman Martin rephrased the motion that it is to appoint Larry McCown as the point person.

Commissioner Houpt – also wants to know what Jesse, being the point of contact means. How is that defined?

Jesse will report in Ex Sess on another meeting with BLM issue but there have been no meetings on this one.

Commissioner Houpt – when our response is in writing to something, will that then go to Fred, Jim Rada, Steve Anthony and everybody involved.

Jesse – yes.

Commissioner McCown and then finally our decision is that’s the Board’s opinion on this before it goes back.

In favor: Martin – aye McCown – aye Houpt - aye

#### **Executive Session: Litigation Update; Legal Advice**

*Discuss potential code violations in the Carbondale area off CRI100; the affordable housing position – direction from a legal perspective and will be open to the public later; provide an update on Silt litigation; legal advice on the status of RETAC; direction concerning IGA’s with City of Glenwood on South Bridge; direction to staff on the County position for the Stillwater proposal in front of the Town of Silt and that will also have some public discussion as well; an Annexation impact report to consider and give direction on; provide legal direction on Fire amendments which will be the subject of public discussion later; an update and status on CR 221 and CR 204; Ed has a personnel issue and the selection process on a position and need legal guidance; Jesse has a proposed Ordinance in the Town of Parachute*

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to go into an Executive Session to discuss the aforementioned items listed by the County Attorney; motion carried.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to come out of Executive Session; motion carried.

Action Taken:

None

## COMMISSIONER REPORT

Commissioner Houpt – Wednesday a Mayor’s roundtable on gravel pits; an I-70 Corridor Coalition meeting on Thursday ; CCI meetings on Friday; a new legislative session has started and both John and I have been in Denver with CCI meetings over the past month; anticipate many trips in the next few months on issues.

Commissioner McCown – Thursday Associated Governments, Northwest Colorado meeting in Meeker. Letter from the DOLA asking that we designate the contact person for the federal mineral lease and severance tax distribution again, this is the employer reports and the oversight board that I sit on so if the rest of the Board he asked staff to acknowledge Larry McCown as the contact person and they asked local government number and email so that we can keep abreast of all reports that will be coming in after the 1st of April.

Chairman Martin asked for action to appoint Larry.

Commissioner Houpt so moved; Commissioner McCown – seconded. In favor: Houpt – aye; Martin – aye; McCown – aye.

Chairman Martin – 12 legislative actions related to severance tax Associated Governments and asked Larry to keep them informed; different legislative meetings that are cycling off the funds that would normally flow to the projects. Commissioner McCown – so far we have had two results that have been favorable that have been killed in committees. So far so good.

Commissioner Houpt – also some bills that would generate more money before cycling off.

Chairman Martin - Pitkin County meeting – noon Tuesday – 27<sup>th</sup> of February at Hotel Colorado.

## CONSENT AGENDA

- a. Approve Bills
- b. Wire Transfers
- c. Inter-fund Transfers
- d. Changes to Prior Warrant Lists
- e. Authorization to ratify the Resolution 2006-117 (Excess Revenues)
- f. Resolution authorizing re-recording the Resolution 2006-114 (Budget for 2007)
- g. Authorize the Chairman to sign the Resolution of approval for a Special Use Permit for an Accessory Dwelling Unit at 0250 County Road 126. Glenwood Springs. Applicants: George and Jeri Sherick – David Pesnichak
- h. Authorize the Chairman to sign the Resolution of approval for the Creek Side Estates Preliminary Plan located 4 miles north of the City of Rifle. Applicant: Mark Sills – David Pesnichak
- i. Authorize the Chairman to sign the Special Use Permit for Storage, Processing, and Material Handling for Produced water treatment and storage pond for EnCana Oil and Gas USA, Inc. – Fred Jarman
- j. Authorize the Chairman to sign the Acknowledgement of Partial Satisfaction of the Subdivision Improvements Agreement for Phase II, Filings 1, 2, and 3 of the Ironbridge Subdivision located in the Ironbridge Planned Unit Development. Applicant: LB Rose Ranch, LLC - Fred Jarman
- k. Authorize the Chairman to sign the Resolution approving the Preliminary Plan for Pinyon Mesa Subdivision located within Los Amigos Ranch Planned Unit Development. Applicant is Pinyon Mesa Development, LLC. – Fred Jarman
- l. Authorize the Chairman to sign the Resolution approving the Preliminary Plan for Panorama Reserve Subdivision. Applicant: Cort Lewis – Fred Jarman
- m. Authorize the Chairman to sign the final plat and Subdivision Improvements Agreement for Overview Subdivision. Applicant: Wayne Rudd – Fred Jarman
- n. Authorize the Chairman to sign the Treasurer’s Disbursement Agreement for Phase II, Filings 1, 2, and 3 of the Ironbridge Subdivision located within the Ironbridge Planned Unit Development. Applicant: LB Rose Ranch, LLC – Fred Jarman
- o. Authorize the Chairman to sign the Treasurer’s Disbursement Agreement for Pinyon Mesa Subdivision in the Los Amigos Ranch Planned Unit Development. Applicant: Pinyon Mesa Development, LLC.- Fred Jarman
- p. Authorize the Chairman to sign the Treasurer’s Deposit Agreement and Final Release of Original Letter of Credit for Phases I and II of Springridge Reserve. Applicant: Springridge at Glenwood springs Development Corporation – Fred Jarman
- q. Authorize the Chairman to sign the Condominium Plat for Building J in the Valley view Village Subdivision, Battlement Mesa PPUD. Applicant: Darter, LLC – Craig Richardson
- r. Authorize the Chairman to sign the Resolution of approval of a Conditional Use Permit for Lot 15 of the Mountain Shadows Subdivision, allowing a mobile tire repair service as a Home Occupation. Applicant: Jose Castillo – Craig Richardson
- s. Authorize the Chairman to sign the Resolution and Special Use Permit for a property owned by John and Mary Railsback, to allow the “Processing and Material Handling of Natural Resources.” Applicants: John and Mary Railsback – Craig Richardson

Exhibit O – Carolyn – this is a Treasurer’s deposit agreement related to a grading permit (a building permit) which you don’t always see but the developer wanted to go forward with grading prior to other approvals and on a voluntary basis was willing to put up some cash so the County could go back and deal with it.

Item 4-F – recording the budget for the County; Resolution was recorded without the Exhibits – it does not affect the date of the recording at all but Don felt there need to be something in the record that related to this.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to approve the Consent Agenda Items a –s removing b; carried.

## REGULAR AGENDA PUBLIC MEETINGS:

- ***A. Presentation of changes to the 2007 Library Budget – Wilma Paddock***  
Cheryl Carrier, Library President, and Wilma Paddock, business manager submitted the Budget Worksheet 2007 for the Public Library District in accordance with the IGA approved by the Library and Board of County Commissioners.

The Library Board has approved these changes. \$233,000 change – some out of this year’s budget and some out of the savings – Consultants and – coming out of fund balance.

A motion was made by Commissioner Houpt and seconded by Commissioner McCown to approve the Library District Budget as revised for 2007.

In favor: Houpt – aye McCown – aye Martin - aye

- ***B. Final Direction Regarding Glenwood Meadows Housing***

Don DeFord submitted the memo regarding the contract with the Glenwood Meadows Housing. He explained this was set for discussion and final direction. He stated the BOCC may wish to engage an executive session discussion to give direction to staff and receive legal advice. The relevant documents include the following:

- January 18, 2007 Letter of Intent to the developers of the project
- The narrative received from the developer outlining their commitment to build affordable housing.
- Minutes of the January 8, 2007 discussion of the subject project prior to the meeting with the Glenwood Springs City Council
- Minutes from the July 10, 2006 BOCC meeting at which official action was taken by the Board of County Commissioners to participate in the Affordable Housing Project with a number of specified conditions
- July 14, 2006 memorandum to the BOCC concerning the legal mechanism by which the BOCC can financially participate in an affordable housing project.

Don said pursuant to my memorandum of July 14, 2006, I believe all parties anticipate the BOCC will enter into an Intergovernmental Agreement with the Garfield County Housing Authority specifying the participation of Garfield County in the Glenwood Meadows project, as well as delineating the conditions, which the BOCC anticipates for enforcement by the Housing Authority. Based upon the actual Motion of July 10, 2006, as approved by the BOCC, as well as the representations received by the developer, I anticipate that if I drafted an agreement today, it would contain the following provision:

- 1. All representations of the developer concerning the number, size and cost of units, as set forth in the January 9, 2007 correspondence from the developer would be incorporated in the Agreement
- 2. The developer will participate with the Housing Authority on the basis set forth in the next to last paragraph of that same memorandum. I would not that the statement they would refund the One Million Five Hundred Thousand dollars (1,500,000.00) to the Housing Authority is highly conditioned, first subtracting all administrative fees pad to the Housing Authority, and secondly a payment of this balance is to be made only upon sale of the subject property
- 3. The official action of the County commissioners on July 10, 2006 required all of the following conditions be included in the contract:
  - a. That the County participate with the Housing Authority for an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00)
  - b. That the payment to the Housing Authority will be base on the amount of Twelve Thousand five Hundred Dollars (\$12,500.00) per unit
  - c. That the amount would be determined based upon the number of units actually built
  - d. That the BOCC determines the participation of the County is undertaken on a comparable level with the city
  - e. That we proceed to payment based on an engineered analysis of the project which demonstrates that it is physically sustainable for the life of the financing.

Particularly, in regard to the latter conditions, I would point the board to the next to last page of the minutes that are attached to this memorandum. As set forth above, my interpretation of your conditions is a best effort to take statements of the Board set forth as conditions and put them in workable and enforceable context. You will note none of your conditions to date require the residents of the affordable housing project, to the extent of County participation, must be employed in Garfield County. Additionally, there has been extensive discussion that this project would be for rental purposes, but I have not found an actual condition to that effect.

If the BOCC desires to alter conditions that have previously been stated or add additional conditions to those I have enumerated, you must take official public action to accomplish the task. It is that final official action I will be seeking today.

Don also had minutes from the City of Glenwood Springs joint meeting on this issue.

Commissioner Houpt – there was a question raised and asked Arnie who establishes the rental levels – is this a regulation in place when looking at who you can rent to?

Arnie Porath, Spruce Developers – this is established by CHAFA and a function of the area median – as it increases or decreases adjustments are made but they set those.

Commissioner McCown – voiced some concerns regarding the financial commitment, \$1.5 is the last money in and will be based on \$12,500 per unit once a Certificate of Occupancy has been issued for the subject unit. Then money from the County would be transferred to the HA – our money if for the finished product. Also, at least one adult member of the rental unit must be employed in Garfield County as the purpose of our contributing is to house those who are trying to live and work in the County.

Arnie – believes this may pose a problem due to CHAFA funds until Title 26 – Internal Revenue section 42 – credits. The loan is the tax credit that we are allocated and from that we derive the equity and the other is FHA; therefore we can't discriminate. He understands the problem.

Commissioner McCown – must work in Garfield County.

Chairman Martin – added no subleases.

Arnie – at least one member of each household work in the County and you want that to be subject to this agreement. He will look into this.

Commissioner Houpt said other counties have done this; Pitkin and Eagle have done this. Worth looking into. We are investing in AH and want to make sure the people living in Garfield County and also Garfield County.

Arnie – regarding the last money in, he has no issue as long as it is in keeping with the construction drawing schedule.

Commissioner McCown – as CO's are issued for each unit, last money in for those particular units but not until they are finished.

Bob Darling – Glenwood Housing Authority – Put **IF** employed otherwise it would restrict retired individuals. Commissioner Houpt – or make exceptions for retirement or disabilities. People who would otherwise qualify under the AH – to qualify.

Patsy Hernandez – question – how it would be policed and how would employment be proved.

Chairman Martin – under the Housing Authority

Don – one of the reasons – we are specifying conditions under which the AH distributes the funds – i.e. retirement situation, then they must be gainfully employed at time of the lease – occupy to the term of the lease or similarly and if employment out of the county they would not qualify.

Martin – HA has the incomes – qualifiers – if you have a job – HA would review.

Don – HA monitor and enforce this provision on annual basis.

Commissioner Houpt – Geneva wasn't present and she felt there should be some protocol to use in terms of how long they stay in the unit.

Arnie – it is an annual requirement that each remain in compliance. It affects the tax credits that he guarantees and if not in compliance it affects Arnie.

Arnie – agreed to no subleasing.

Don will put this in the agreement. Leasehold has to be in the residence and all persons have to sign a lease.

Commissioner Houpt – talk to Geneva for those disabled or retired; this is an exception that should be made. We don't want to subsidize housing for those working in a neighboring county.

Don – The Board will need to approve by motion these conditions. One question however in regard to the conditions already adopted, did the Board wish to have Geotechnical review of the project?

Arnie – agreed to make these available and the construction drawings should be ready most any time. They want to start construction in April/May.

Don – valuable to have this done on the actual construction drawings and we would need a 30-day time period for our firm to do this. Randy Withee County engineer is who these need to go to.

Arnie – back to the last monies in at the time of CO's – He is requesting the CO be issued before the money goes in.

CO's require lien releases from the subcontractors – can't give the CO before the other people sign off.

Commissioner McCown – can see that on the last units. You don't have the money to complete the units?

Arnie explained they do but the funds would be needed for contingencies.

Don – the money will flow to the HA – HA is acting as a holder of the funds – they could hold it in Escrow until the CO's have been issued and the money released. Our requirement is that the CO be issued before the money is released.

Arnie – these are FHA assured loans and in keeping with what Larry said, all their money would be expended.

Commissioner McCown explained how this would be handled saying when you complete 10 of the 120 units, then as the CO is issued for those 10 units, the money would be released at \$12,500 each unit.

Arnie – explained in order to rent units he needs certificate of occupancy and he can't get those unless the subcontractors have signed off; therefore the flow of funds is at issue.

Commissioner McCown – this is the part that we don't want to be involved in. As other units are coming out of the ground, if this project is so lean that our money has to be in first, this scares me to death.

Arnie – timing of how the buildings can be released. More definitive from the two sources of funding to see what they will require.

Don – like the Board to see the draft of the final conditions and a draft agreement with AH and take a look at all conditions – Arnie may need to come back before the Board. Now we can go to the HA and the developer and see if we can do these.

Commissioner Houpt – supported Larry's idea on a certain amount of money per unit to be released and hopes this can be worked out by the developer.

Arnie – it is all related to timing

Commissioner Houpt made a motion that the County Attorney move forward with the Housing Authority for moneys to be paid to the Meadows Affordable Housing project in the amount assumed to be \$1.5 million that factors out \$12,500 per unit for 120 units; that one member of each household who rents these units be employed within Garfield County and that exception to retirees or folks who are disabled and unable to be employed; that we select an engineer to review the final plans prior to a building permit being pulled within a reasonable period of time; hiring someone to do this and Randy be the point person for the County; additionally, no subleasing, all units to be rental units pursuant to CHAFA guidelines and HUD guidelines. She referred to the sheet the developer gave us that outlines some of those restrictions on the 40/60/80 AMI and rental levels also be set by CHAFA and HUD guidelines.

Don – did you address payment only at the time of CO's?

Commissioner Houpt – I was originally going to say at the time of building permit but I understand Larry's concern and would support the notion of payment upon CO's but I want the HA to work closely with the developer to make sure they aren't caught in a situation where they can't get the CO because they don't have the funding to make that happen. I wouldn't anticipate that in this size of a development.

Don – so if I put in a letter setting out conditions that the payment pursuant to the IGA be made only at the issuance of CO's is that within the scope of your motion?

Commissioner Houpt – wants to make sure the Housing Authority has the flexibility to work with the developer.

Don explained what he is anticipating after listening to the conditions and some of the concerns you've raised; I should take the form of the motion and put it in a letter to you and to the HA and this Board will participate and commit fully \$1.5 million under these conditions. Set out all the conditions, get this back to the developer this week so that next week they can get back to you with issues or problems that are raised by your final conditions. They need to know initially where the Board stands on these issues before they can respond.

Commissioner McCown – seconded.

Don – the last issue, do I need to include a provision on enforcing the residency and income on an annual basis.

Commissioner Houpt – this is a requirement of this money anyway.

Arnie – two comments – on the CO issue, it may be just a timing issue and all this may come together in a moment in time. The last moneys in, the CO is given and the releases are coming together all at the same time, so everybody gets satisfied. So there's no passage of time between these. On the issue of retirees, Geneva, on her

waiting list is part of what she does, she has a number of vouchers and those some will have some employment or no employment at all.

Commissioner Houpt – the language has to be consistent with the Housing Authority language.

Don – the language I anticipate using in the letter, the language would be that the HA will also make these units available to retirees and others who are disabled and not working under guidelines currently in place by the HA who are individuals who are currently residents of Garfield County at the time of application.

Commissioner Houpt – or other individuals who fall under Geneva's program for vouchers. She wants to be able to go through her list of people who qualify under her Housing Authority program for these units. So I would include in motion – retirees and disabled and otherwise who would qualify under the HA guidelines.

Commissioner McCown – asked what will take preference, will there be a rating scale. Geneva's list – first choice or Garfield County criteria. What does our conditions of at least one member of the unit be employed in Garfield County mean?

Chairman Martin suggested that Geneva would have to respond to these things if they do not fall within her guidelines.

Don will write the letter and get a response back from Arnie and Geneva – this will be set for the agenda on February 15, 2007.

In favor: Houpt – aye McCown – aye Martin – aye

- **C. Resolution adopting a Compensation and Classification Plan for Garfield County Employees, Incorporating Approved Personnel Policies and Procedures**

Patsy and Ed submitted the Resolution which states the salaries of all employees working directly under the authority and control of the BOCC are solely within the province of the BOCC.

The Salaries of the Undersheriff and the Deputy Sheriffs of Garfield County may be established by the Garfield County Sheriff, with the approval of the BOCC pursuant to 30-3-106, C.R.S., as amended.

The BOCC may establish a compensation and classification plan for the Garfield County Clerk and Recorder and it shall become binding upon those offices by acceptance of that plan by each elected official.

The Garfield County Coroner and Garfield County Surveyor do not employ deputies and/or employees paid directly by Garfield County.

Staff recommendation is to adopt the Compensation and Classification plan set forth in Exhibit A, which outlines the suggested compensation for each employee.

Anomaly's raised and Ed needs to make these.

This Resolution shall become effective upon signature of the Chairman of the BOCC.

Patsy stated, the Garfield County Clerk and Recorder, Garfield County Treasurer, Garfield County Assessor and Garfield County Sheriff accepts and adopts the Compensation and Classification plan set forth in Exhibit A. as binding on the employees of their respective offices. Additionally they each accept and adopt the Garfield County Personnel Policies and Procedures Manual as currently in place, as amended by the BOCC, including the work week formula established by the BOCC pursuant to that Manual.

Patsy said the payroll begins next Monday and hoped to have this approved for HR so we can make it for the February payroll. Not a huge problem and with the BOCC's approval, staff may have to tweak some. If approved next Monday we could go ahead.

Ed estimated the outside cost to be around \$5,000.

Don said this will be a not to exceed \$5,000 amount and it will not affect elected officials only than those who work for the County Commissioners.

Commissioner Houpt moved to adopt the Compensation and Classification Plan for Garfield County Employees incorporating the approved Personnel Policies. Commissioner McCown seconded.

In favor: Houpt – aye Martin – aye Opposed: McCown - aye

- **D. State Grant Application for new administration office – Brian Condie**

Brian Condie and Carolyn Dahlgren were present.

Brian submitted the document as referenced and explained the scope of work is to participate in construction of airport administration and service building. The grant budget consists of a State grant of \$200,000 and the local match by the County in the amount of \$647,000. Brian stated that this was put in his budget for 2007.

Brian requested the Board authorize the Chair to sign the Grant Agreement.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to authorize the Chair to sign the State Grant Application for the new administration office at the Airport in an amount not to exceed \$200,000 with CDOT- aeronautics.

In favor: Houpt – aye McCown – aye Martin – aye

- **E. Annual ASMI Contract for Instrument landing maintenance – Brian Condie**

Brian Condie and Carolyn Dahlgren were present.

The agreement for the annual ASMI contract for instrument landing maintenance at the Airport was submitted for the Chair's signature.

This is a single source vendor.

Carolyn – ASMI hasn't seen the new state law on immigration.

Brian – went over it and they had no problem – they have sent a fax copy but he hasn't received it.

Request to sign the contract and get a signed release.

Carolyn asked the Board if they would be willing to sign the contract pending the willingness of the contractor to sign the state law on immigration.

Commissioner McCown – so moved; Commissioner Houpt seconded.

In favor: Houpt – aye McCown – aye Martin – aye

- **F. Amendment #1 to RTC #4 – Brian Condie (T-Hangar Area Paving and Pavement Rehabilitation)**

Peter Olsson, Brian Condie and Carolyn Dahlgren were present.

Carolyn explained that this was originally executed in August 2003 and allows for four renewals of one year each.

The contract was amended in June, 2005. Both the sponsor and the engineer have executed this Amendment No.

1 to Release to Contract No. 4 to be effective as of the effective date set forth in Release to Contract No. 4 no matter the date of execution of this document.

Brian explained this and this is the legal paperwork to make that official.

Carolyn – Peter and I had a misunderstanding saying that once the Board agreed to the subcontracting arrangement, he continued to draft a contract for the most part in his office and didn't realize he was using the form that included your approval of the subcontracting arrangement. So this corrects the record by putting the letter agreements between Olsson and PRT as part of the public record. That's why you have three different documents that are amendments to three different releases to contracts and they include the subcontract arrangement.

A motion was made by Commissioner McCown seconded by Commissioner Houpt to approve the amendment No. 1 to release No. 4 and the Chair be authorized to sign.

In favor: Houpt – aye McCown – aye Martin – aye

- **G. Amendment #2 to RTC #5 –(Runway Reconstruction Preliminary Engineering for 404 Permit) - Brian Condie**

Peter Olsson, Brian Condie and Carolyn Dahlgren were present

Carolyn explained that this was originally executed in August 2003 and allows for four renewals of one year each.

The contract was amended in June, 2005. Both the sponsor and the engineer have executed this Amendment No. 2 to Release to Contract No. 5 to be effective as of the effective date set forth in Release to Contract No. 4 no matter the date of execution of this document.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to approve the amendment No. 2 to release No. 5 and the Chair be authorized to sign.

In favor: Houpt – aye McCown – aye Martin – aye

- **H. Amendment #1 to RTC #6 – (Airport Layout Plan Changes) Brian Condie**

Peter Olsson, Brian Condie and Carolyn Dahlgren were present

Carolyn explained that this was originally executed in August 2003 and allows for four renewals of one year each.

The contract was amended in June, 2005. Both the sponsor and the engineer have executed this Amendment No. 1 to Release to Contract No. 6 to be effective as of the effective date set forth in Release to Contract No. 7 no matter the date of execution of this document.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to approve amendment No. 1 to release No. 6 and the Chair be authorized to sign.

In favor: Houpt – aye McCown – aye Martin – aye

- **I. Amendment #1 (2007 Renewal) to RTC #7 (Land and Easement Acquisition) – Brian Condie**

Peter Olsson, Brian Condie and Carolyn Dahlgren were present

Carolyn explained that this was originally executed in August 2003 and allows for four renewals of one year each.

The contract was appropriated for 2007 on December 18, 2006 when the budget including the encumbrance of \$1,500,000 of Federal Grant Funds available for Land and Easement acquisition related to the extension of the runway at the airport. An amount not to exceed greater than \$50,000 or approximately \$57,500, which amount shall constitute the ceiling amount/amount not to exceed for calendar year 2007 under this Release to Contract No. 7. Such amount may be altered by mutual written consent of the sponsor and the engineer, assuming the availability for budgeted and appropriated funds in the GARCO budget "Airport Fund". Other than as amended the Contract as amended and revised and Release to Contract No. 7 shall remain in full force and effect and executive of this Amendment No. 1 to Release to Contract No. 7 shall serve as written authorization by the sponsor for the engineer to commence services as outlined.

The Board has already approved the budget and this is the 2007 portion

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to approve Amendment No. 1 to release No. 7 and the Chair be authorized to sign.

In favor: Houpt – aye McCown – aye Martin – aye

- **J. Release to Contract #8 with Exhibits (Runway Reconstruction Design Engineering) – Brian Condie**

Peter Olsson, Brian Condie and Carolyn Dahlgren were present

Carolyn explained that this Release to Contract No. 8 is for engineering design work for upgrading of Runway 8/26

to the ARCD-III requirements. The runway way may have a slightly different horizontal alignment and will have a significantly different vertical alignment to the existing runway. It will be 7,000 feet long and 100 feet wide. The services to be provided under this Release to Contract have been divided into 9 tasks to facilitate matching the services to the funding available and the likely phasing of the construction work. Task 1 is the Conceptual Design for a cost of \$21,199,176.; Task 2 is the Borrow Pit Evaluation and Pavement Design Alternatives Analysis. Task 3 is the Final Design – County Road 346 (West Mamm Creek Road) and County Road 319 Relocation and Dry Creek Relocation for a cost of \$3,474,380. Task 4 is the Preliminary Design – Extended Runway Safety Area West of the Runway 8 End and North of the Extended Runway Centerline for a cost of \$3,177,450. Task 5 is the Final Design – West Runway Grading and Drainage for a cost of \$9,564,838. Task 6 is the Preliminary Design – East Safety area Grading and Drainage for a cost of \$4,044,550. Task 7 is the Final Design – East Safety area grading and drainage for a cost of \$4,044,550. Task 8 is the Preliminary Design – New Runway and Partial Parallel Taxiway Paving and Lighting for a cost of \$9,920,744 and Task 9 – the final design – New Runway and Partial Parallel Taxiway Paving and Lighting for a cost of \$9,920,744. The Engineer shall complete this project for lump sum fees for each task outlined for a total \$1,541,800. The Sponsor agrees to pay the Engineer for services covered by this Release to Contract monthly on the basis of the percent of work completed and as agreed to in the Professional Services Contract Section XII inclusive. Any work done on this project after December 31, 2008 will be subject to fee renegotiation. The amount to be expended pursuant to this Release to Contract No. 8 is limited for the year ending December 31, 2007 to \$850,000.

Carolyn – letter agreement are attached and found a typo and a date and asked Chairman Martin to initial these changes.

Brian stated that Olsson is giving us a good price on this.

Peter pointed out in Task One – conceptual design – have done it and unlikely that the EA fails they would have to redo – contingency – and could result in a reductions.

Brian – kept this amount in just in case.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to approve the Release to Contract No. 8 not to exceed \$1,541,800.

In favor: Houpt – aye McCown – aye Martin - aye

## **REGULAR AGENDA**

### **PUBLIC HEARINGS:**

#### **CONTINUED PUBLIC HEARING RE: CONSIDERATION OF ADOPTION OF GARFIELD COUNTY ORDINANCE NO. 2006-1 – ORDINANCE AMENDING ORDINANCE 2005-1 AS SUCH ADOPTED THE INTERNATIONAL FIRE CODE OF 2003 – GLENWOOD SPRINGS FIRE PROTECTION DISTRICT**

Ron Biggers, Andy Schwaller, Don DeFord and Mike Pifer were present.

Exhibits – Memorandum from Andy Schwaller to the Board; a red-lined version of Exhibit A which was prepared by CA's office and included in the packet. Also an email from Lou to CA and Andy setting forth the Sheriff's Office position.

Chairman Martin entered the exhibits.

Chairman Martin swore in the speakers.

Don – exhibits – alterations to the form and amendment to the amendment – Sheriff and Don's take on Andy's showing the effect of the changes. The title of the Ordinance – 2006-1 – hearing actually commenced in 2006. Memorandum of Feb. 5<sup>th</sup>.

Andy stated that during the hearing of December 18, 2006, it became evident that additional editing of the Ordinance proposed by the Glenwood springs Fire District needed to be made before a complete and formal review of the Ordinance could be achieved by the Board. Staff was directed to discuss the proposed amendments with the fire district prior to a continuance of this hearing scheduled for today. Andy submitted the review of what stayed the same and what changed in Exhibit A.

Discussion was held with respect to open burning, prohibiting indoor pyrotechnic displays and a requirement not to bury fire hydrants with snow, automatic sprinkler systems and deleting an exception not requiring a manual pull box alarm in a building with an automatic sprinkler system for various different occupancies.

Andy stated that Section 907.1.5 remained the same and requires the most expensive alarm system (addressable) to be used everywhere with an exception for a conventional system at the discretion of the fire code official. At the December 18<sup>th</sup> meeting there are many advantages to the addressable systems. The disadvantage relates to the staying within a budget for a building.

Commissioner Houpt – asked about open burning.

Mike Pifer said they have stipulations on what people can burn – construction debris not allowed. Vegetation for mitigation purposes or removal to reduce fire loads – very specific – we feel we give adequate time and historical fire ban burns – not issue and don't call us – exceptions are made - ie. Boy Scouts – open fire pits – like to see this continued – people more notification – campfires are regulated on public lands and they issue their own burn guidelines – campfires depend on the severity of what is going on – but if there is a total fire ban, negates the allowance - fire pits on property.

Mike – a burn barrel is not approved.

Commissioner Houpt – would allow a fire ring

Ron – the request gives them the opportunity to give them a chance to go out and look at it. It also allows them to say no.

Commissioner McCown – confused – Ron do you want all the residences to call before they light the grills?

Ron – a one time event – the get calls – if they deem it necessary they can look at it. Barbeque grills are not involved here.

Kenneth Smith – addressed the item no. 4 – addressable alarm detection systems.

Ron stated construction in Glenwood is on hillsides and makes it difficult for them to get to the building in case of fire – therefore these restrictions are necessary. It addresses a dialogue between the fire department and the builder.

Kenneth Smith – in the current adopted restrictions – addressable system – standard and not a demonstrated need to amend this standard for the fire protection district. Recommended staying with the standards as currently adopted.

Commissioner McCown – on tanks, a maximum of not over 1000 gallons for storage of Class I and II. He gave an example of Fattor and if he was to move it would be new.

Ron – he checked with various jurisdictions – this is to get a handle on above ground tanks on combustible tanks.

Andy – the state has rules and requirements that cover this.

Commissioner McCown said the state regulations make sense.

Commissioner Houpt – see what is reasonable in this County and not in the state – we need to figure out what is in place and what the fire district would perceive what they could handle.

Andy – the state does inspections.

Commissioner McCown – railroad tankers – they do what they want. Heartburn with the 1000 gallon storage.

Mike Pifer – this has to do with a lot of temporary tanks during construction. He asked Ron to look up the standard code around the nation.

Ed – state approval at our Road and Bridge facility.

Commissioner McCown – a fire district can trump the state.

Wording was agreed to be changed.

Mike said they get a lot of requests for temporary storage.

Ron determined the code states the 1000 tanks.

Mike – we are talking about new tanks. The other districts would have to address those. Code in the City and the Fire District consistently so developers can look at this and to move Mike Fattor's plant may please some folks and if so who would enforce this. This doesn't apply to propane.

Andy – some stipulations for exceptions for Class I and II.

Commissioner McCown – it says permanent. We recommend that nobody in the County have over a 1000 gallon tank and we should never have approved this. This needs amended today. If it is limited above ground tanks would be a problem – this will be researched later.

Fees stay the same as in December 2006.

Mike – codes are there just like speed limits – this will help with the education process and enforcement is an issue. Knowledge of the code and speed limits are about the same.

Commissioner McCown – 500 gallon tank for a landing strip – would that be an approved use – it would above ground.

Mike – they would come through the process and the code addresses this and if it meets the oil and gas regulations that require fire extinguishers in place – where are they placing it – a private residence – these restrictions fall into zone allowance of things. This given the fire department to review this request.

Commissioner Houpt – one point to be researched – wait until we have all answers if this is not problematic.

Mike want all concerns and questions to be before them – all codes apply – these are minimal – okay to continue.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to continue this until next week in the 10:15 time frame.

#### **ORGANIZATIONAL MEETING – BOARD OF COUNTY COMMISSIONERS**

Commissioner Houpt pointed out that this is one of the few counties that do not rotate the Chair position and feels there is great value in doing this – she would like to be considered for the Chair position.

Commissioner McCown – no matter to him; the Chair only keeps the things going and can't make the motions. Who is the chair creates no heartburn for him.

Commissioner McCown made a motion to keep the organization structure the same.

Chairman Martin – seconded and stated that he likes to stay neutral.

In favor: McCown – aye Martin – aye Opposed: Houpt – aye

#### **Public Comments –**

Sonny Stapleton asked why there is no noise regulation in Garfield County; she has written letters to the Sheriff trying to figure out why no noise ordinance in Garfield County

Chairman Martin – the Sheriff is limited in a private residence. It is an age old problem – if we are going to do it, we need to figure out how to enforce it.

Commissioner Houpt – there needs to be a discussion by the County on an ordinance that would include noise and harassment. Suggested to get municipalities to enforce noise regulations.

Chairman Martin – the legal staff would have to prosecute the case and would need an agreement to do that.

Commissioner McCown – Sonny would have to be the witness in this case and follow the line of evidence.

Commissioner Houpt – wants to start the dialogue and investigate. She favored direct the legal staff to look into it and possibly use municipality's codes.

Commissioner McCown – what about the state – thought it was the state statute.

Carolyn – stated that Counties are limited by statute on what they can do.

Chairman Martin – state statute defines the decibels of noise allowed.

Carolyn – Statute defines noise over a certain decibel. This would be a civil complaint

Chairman Martin – not sure you can do it criminally.

Carolyn – a private civil complaint. We will investigate it but it doesn't address what folks in the neighbors want to do?

Sonny – asked if this was a personnel issue.

Carolyn – it is a legislative issue that determines the guidelines. The statute makes it a nuisance and a tort between private citizens. She also recommended a private attorney would be helpful.

Chairman Martin may have to look at new regulations to allow the County to do it.

Carolyn – if there is a SUP or CUP – then the BOCC could do some enforcing.

#### ***24 hours of Sunlight – Government Mules***

Charles Zelenka, Fred Jarman thanked the BOCC for funding their team. Race started on Saturday and did very good – the came out 5<sup>th</sup> out of 13 teams. Fred also thanked Tresi for the chicken soup she supplied for them during the night. Fred said the challenge is on for SGM next year. Fred refunded \$125 for registering early.

#### **PUBLIC MEETINGS:**

##### **BUILDING AND PLANNING:**

##### **CONSIDER A REFERRAL TO THE PLANNING COMMISSION FOR A SPECIAL USE PERMIT FOR AN INDUSTRIAL SUPPORT FACILITY LOCATED 4.5 MILES WEST OF THE TOWN OF PARACHUTE ON STATE HIGHWAY 6 & 24. APPLICANT: FRAC TECH SERVICES – DAVID PESNICHAK**

David Pesnichak presented.

The Applicant, Frac Tech Services, LLC, requests a SUP for an “Industrial Support Facility which would include: material handling, pumping facilities, warehouse facilities/staging areas, storage areas, and accessory uses to the above” in the RL zone district.

Approximately 6 miles west of the Town of Parachute, located between I-70 and Highway 6 & 24 (East of Travelers Highlands Subdivision) on 77 acres.

##### **BACKGROUND**

The Applicant is proposing to construct an “Industrial Support Facility” to accommodate the storage of heavy trucks, vehicle washing and servicing, office building, warehouse building, acid dock, gel tanks, and fueling station. These buildings will include an 80' x 312' main building containing a service bay area of about 80' x 200' and an office area of about 80' x 112'; and a 225' x 50' warehouse building. The services and offices on this site are to be used by the Applicant, Frac Tech, who is engaged in the oil and gas well frac services industry.

The Applicant has represented that the hours of operation are to be 24 hours a day, 7 days per week and will include both heavy truck traffic as well as employees accessing the site with personal vehicles. Truck traffic is contemplated

to range from 32 to 60 trips per day while employee traffic is to range from 20 to 35 cars per day. The number of employees is to start at 32 with numbers potentially reaching 120.

Activities on the site are to include truck storage for 44 trucks, employee parking, truck servicing/fueling and washing, warehouse loading and unloading (including gels, acids, polymers and biocides), sewage treatment, and offices.

This facility will have a high level of visibility from I-70 as well as Highways 6 and 24. In addition, the location of the property is immediately east of the Travelers Highlands Subdivision which is zoned Commercial Limited and will accommodate numerous commercially oriented businesses.

This application is to run concurrently with a rezone request, which is scheduled for the Planning Commission on April 11, 2007. The rezone request is for a change in zoning on the subject parcel from ARRD to RL which allows an "Industrial Support Facility" as a Special Use.

#### STAFF RECOMMENDATION

Staff recommends the Board refer this application for a Public Hearing before the Planning Commission for the following reasons:

1. This SUP is to run concurrently with a Rezone request on the same subject property;
2. A rezone from ARRD to RL at this location would be the first RL zoning south of I-70;
3. The scale of the project is large with a high level of visibility and located within the Visual Corridor within the Comprehensive Plan;
4. The project is anticipated to produce a significant amount of traffic including heavy trucks and passenger vehicles.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to refer this to the Planning Commission for their recommendations to the Board.

In favor: Houpt – aye; McCown – aye; Martin - aye

#### **CONSIDER A REFERRAL TO THE PLANNING COMMISSION FOR A SPECIAL USE PERMIT FOR "RESORT AND RECREATIONAL SUPPORT FACILITIES" TO THE PLANNING COMMISSION.**

#### **APPLICANT: ORCHARD LAKE LODGE LLC – CRAIG RICHARDSON**

Craig submitted the staff memo and explained the request for consideration for referral of a Special Use Permit to the Planning Commission. The Applicant is proposing to operate a commercial lodge that will accommodate fishing and hunting activities, while providing lodging, dining and commissary operations.

#### Site Information

The subject property is located approximately 15 miles northwest of the Town of DeBeque, on County Road 209. Orchard Lake Lodge, LLC. owns a 40.196 acre parcel zoned Resource Land: Gentle Slopes & lower valley floor. Adjacent land uses consist of undeveloped BLM land, and ranching activities.

#### Staff Recommendation

Staff recommends that the Board of County Commissioners not refer this SUP request to the Planning Commission for recommendation.

Tim Thulson and applicant were present. Tim added that this is similar to the Travelers' Highlands that was heard by the Board and requested the BOCC hear the matter directly.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt that the BOCC to hear the Planning request.

In favor: Houpt – aye McCown – aye Martin - aye

#### **CONTINUED BUILDING AND ZONING VIOLATION – WILLIAM AND KIMBERLY VEZZOSO – RON VAN METER**

This was originally scheduled for January 15, 2007 but the County received a request for a Continuance submitted by Mike Sawyer of Leavenworth and Karp. The matter was approved to be held today.

Ron Van Meter submitted the alleged zoning violation and investigation information stating that the matter involves an illegal front property fence, illegal garage/shop and failure to obtain grading/excavation permit; also a zoning violation for storage of heavy equipment without a Special Use Permit, a site for processing, storage or material handling natural resources without a Special Use Permit and an illegal contractor's yard. Ron suggestion was to have the matter referred to the County Attorney for abatement action. This is the 7<sup>th</sup> photo – Vezzoso Berm photo

Mike Sawyer, Bill and Kim Vezzoso and son Bill Vezzoso, Jr. were present.

Ron Van Meter submitted Exhibits in a packet of information with photos and the original complaint filled anomalously.

Ron stated in his Memorandum to the Board that in 1990 a summons and complaint was issued in a Uniform Summons & Complaint from the Garfield County Sheriff's Office with charges the owner used the property against zoning regulations. Heavy equipment was being used and a zoning violation in the ARRD zone district. The actual final disposition of this summons and complaint is not exactly known at this time. The BOCC and P & Z received an anonymous complaint and Ron included that in the Commissioner's packet. Ron added that in the anonymous complaint there are major allegation that the Vezzoso property is being operated as a gravel pit operation and Environmental issues related to noise, dust, fumes and back-up alarms on heavy equipment as well as a business referred to as Independent Trucking. Ron stated that he sent a letter on 12-3-2006 to the Vezzoso regarding the allegations and noted that the complaint referred to dump trucks, a bobcat, rock screener and crushers. This was being used for commercial operations in the ARRD Zone District. Reference was made to the 1978 Zoning Resolution and particular notice was to the storage and handling of natural resources without a Special Use Permit. Ron said he had three separate phone conversations with Mr. Vezzoso and Bill Vezzoso was reluctant to allow Ron access to the property to investigate. On 12-26-2006 arrangements were made to do an inspection of the property and Ron spent 45 minutes taking photos and documenting the alleged violations. Ron noted at this meeting they met in a structure and it was built under the representation of an Ag building. They met in this office that was located on the left hand side of the barn looking west. There was a couch, desk and chair in this office. Ron said he also walked the property and Bill discussed the grading, berms etc. and Ron explained and discussed the grading allegations. This property is taxed residential. As a result of the site visitation it was apparent that the allegations were violations of the 2003 UBC and the Garfield County Zoning Resolution of 1978 as amended.

Ron submitted various photos and explained that the property fence built was built without a permit and it was 98 inches high, not including the cap at various locations. Ron did not measure the length but estimated it to be approximately 75 yards in length. Another item on the site visit as a coding violation is a second wall as an interior retaining wall and a pit run. Bill had threatened a court order would be needed to allow Ron on the property. Ron estimated this fence to be over 6 foot tall. The 3<sup>rd</sup> allegation is the two-bay garage shop and dump truck; the office is located in this building. It wasn't a heated office but had seen employees come and go in the office but not on the day he was there. Building violation were the grading and excavation without a permit. Ron explained that this is residential property not agricultural and required that they obtain grading permits. An additional handout was submitted as a result of the email late Thursday stating there is substantial grading, a privacy berm, some vegetation done and seeding to make portions to make it attractive. The person sending the email, since the most recent allegations in the 5 page letter, states this berm is approximately the length of a foot ball feet and 8 feet tall. The alleged zoning violations include: the storage of heavy equipment, 3 dump truck, 1 belly loader, 1 bob cat and a loader and in addition a screening plant and fill operation. Mr. Vezzoso stated he has used this 27 hours and on occasions he does lease it out for use on other properties. Ron didn't witness the operation of the screening plant. The belly loader - all of these items refer to a contractor yard and the front end loader – this contractor yard is for storage and material handling requiring a special use permit in the ARRD zoning district. Another piece of the investigation (Mr. Vezzoso did respond to the site inspection where he responds to the alleged zoning violation and submitted to the BOCC.) Bill Vezzoso submitted his own exhibits and a power point was provided.

Copies of identification used in the DEX telephone book show the name of his company as Independent Trucking – and the most current copies he was able to observe three different phone numbers in relations to this operation. The second handout is in the yellow pages and mentions Independent Trucking and Excavation. These advertisements have the same phone number as the home address and 3<sup>rd</sup> is the white pages and it also had William Vezzoso with the same number as the Independent Trucking and Excavation. In summary as a result of the latter dated 11-20-06 with the email this notice of alleged violations required a certified letter and once again resulting in investigation that finds violations of the Zoning Resolutoiu of 1978 as amended. Ron is here today to see what action or recommendations the Board would recommend.

Mike Sawyer, Attorney for the Vezzoso's held what was perceived as a court hearing. Carolyn reminded Mr. Sawyer that is was not a public hearing. Mike summarized his clients case and continued stating that at the conclusion of this meeting he believes the Board will find there are no violations of the building code or the Garfield County Zoning Ordinance on the Vezzoso's property and you would direct County staff not to pursue this matter any further action. The Vezzoso's are not only nice people and good neighbors, but they contributing members of their community and hardworking independent business people. Aspen Daily News a week ago, printed a story about this and the alleged violations and I believe that article painted an unfair image of my clients that quite frankly isn't true and potentially could bias decision making in this case. Mike provided the Board a packet that has these letters in it. He referenced two letters from neighbors Robert Hutton and Sharon Washburn and Randy Hughes. Carolyn – again reminded Mike this is not a public hearing – this is a public meeting.

Mike – continued with a response to Ron Van Meter alleged violations saying that Ron broke out the issues as matters affecting the zoning and building code. Ag use of the property, Ag use and what this allows them to do. Kim Vezzoso explained about the 4H and animals as well as the vegetable garden and flower garden elaborating on the food and flowers she gives away. She believes this to be an Ag situation when they purchased the property and they have made Ag improvements. In 1987 when they came to a property it was full of thistle; they started with the ditches, horse, pigs and flowers.

Mike explained they had pigs, horses and cattle and moved to this location from a trailer park so the children could be in 4H learning and growing things so they would learn how hard it was to make it.

Bill Jr. stated the office building was used for 4 H projects and for Ag purposes since he was 9 years old.

Ron Van Meter referred to it as an office with a desk, chair and area for workers.

Bill Jr. stated they used this for 4H record keeping.

Bill explained that Kim was in real estate and they raised longhorns and sold some meat, vegetables and livestock, however no records were kept. They sold some pigs and they also bred pigs.

Kim described the garden activities – being part of the community – taking care of the elderly – grew more than needed and gives vegetables away – uses the flowers and takes them to shut-ins and the sick. Kim described the Ag projects and added they expanded the property to orchards and more flowers.

Mike raised the issue of Ron's allegations stating the construction and use of a barn. Bill Sr. added that this is not the first barn they built, the barn blew over four times with wind speeds of up to 75 to 90 mph. Photos of the current barn were in the packet. Bill Sr. said he called and talked to the Building and Planning Department and asked if he needed a permit and was told no. This was a reconstructed barn in the year of 1994 or 1995. At the time the barn was constructed, uses were no deception - we had cars and as a landowner, use as any normal person would do.

Mike – reiterated the office building was primarily used for 4H to hold meetings.

Bill Sr. – built a new barn and used the old barn for medicines.

Mike – the barn was constructed for agricultural purposes and originally the drainage projects were to return to full Agricultural use.

Regarding the front fence – it was a wood fence formerly – the current fence was built for wind protection and Bill explained the construction of it.

Fence height - from road height – is 5 feet. Fence behind his house is constructed of 3000 lb block 2x2x6 – fence is into the ground and he planted the blocks 4 feet deep in the ground. He is turning it into a stucco wall. The fence has benefited Kim's agricultural use with flowers and corn – winter squash and pumpkins.

Bill Sr. – measured the height of the fence. It is 4.5 above the feet. Didn't know he wasn't paying Ag taxes – paid too much – he's applying for a reclassification to agricultural now with the County.

Next issue that Ron addressed is the grading on the property.

Bill said this is due to drainage issues. When the County did the road work on CR 100, they built up the road and it brought the elevation up 2 feet and water used to flood back through a release culvert – afterward the water didn't drain and built up higher. They had ponding of water in the low points on his property. Impact – no grass so they needed dirt. They showed a reclamation plan for the Vezzoso pasture. Bill said he lost two horses due to soft hoof

disease from the horses standing in water. Solved the problem – reasonable solution – proceeded to pack back pasture to where the forest service and neighbors couldn't flood in - alleged gravel pit was used in this effort.

The berm is on the northerly property – started at least several years ago – completed the berm and he told Ron he needed more dirt. The berm is vegetated with Pinon. He said he rakes both sides of the berm every year – it is sprinkled and irrigated. Bill was flabbergasted that he needed a grading permit. He maintained he has done grading on Ag land for many years. He wasn't aware that he was paying taxes on residential property instead of Ag land. Mike confirmed that Bill wasn't aware that the County changed the standard a few years ago to where a permit is needed to do grading on his land. Mike asked Bill is he planned to seek Ag tax status or get a grading permit before he does any more grading – Bill said yes

Mike alluded to the next issue raised in Mr. Van Meter's letter relates to the "Gravel Pit" on the property and asked if Bill ever mines or excavates anything off his property.

Bill was a miner and knows it takes a permit to do mining anywhere and no he has never mined any gravel on his property. Bill stated the materials were not produced on his property. Material in question was hauled in from River Valley Ranch, he had two job sites and they had excess of approximately 100 loads. Most of the time he will put a bid in and we'll put so much to get rid of the material; this was a kid struggling told the contractor he would haul off the material to do the pasture. A Screen on the property was also in Mr. Van Meter's report and Bill was asked if has operated the screener for commercial purposes. He has operated the screener for the 2 years and stated he only ran it 27 hours total and uses the screener for his commercial operation and this occurs ie. Pitkin Iron, Bill has mining permit for him to be able to do this. He has rented it out to screen the limestone, however never for commercial purposes.

Bill stated he has never transported material off his property from material he has brought on that then was screened and took off the property for commercial purposes. He does haul off roots from dead trees or pieces of pipes after it is screened it goes into the pipe and he discards it.

He has given fill and top soil to neighbors but said he never charges for it. A crusher has never been used on the property and Bill said he has never produced aggregate.

Mike made a legal comment that the use of the screen and the storage of the material has been for Ag purposes as Mr. Vezzoso has described for the purpose of elevating that portion of his pasture that has suffering from drainage problems – it has not been used for commercial purposes and do not believe this meets the legal definition of processing or storage of natural resources as intended under the County's Zoning Ordinance and for that reason, there is not a zoning violation here. By analogy we do not require people in the ARRD zone district to get an SUP every time they get a truck of fill or top soil. Mr. Vezzoso has the equipment to do more than a dump truck load or two at a time but again the purpose is the same – this material has been brought in and used for Ag purposes.

The last issue Mike addressed was the parking of heavy equipment on this property and specifically the events that took place in 1991 when he was issued a summons by the County for essentially the same activity.

Bill was sentenced to come to court because of having a company and equipment on my property and was told when I got to the court room that there were other members of my community being judged by the same thing that I was written the ticket and their outcome would be my fate and to wait in the hall for the outcome of the hearing.

Mike – in 1990 Bill's understanding was that in addition to you there were other excavators who had parked heavy equipment on their property who were cited by the County.

Bill agreed and said this included Joe Zamora, Clem Hughes, Ron Troxel, Frog Excavation and Fin trucking excavation.

Bill was not represented by counsel at the hearing – he was trying to survive at this point.

Bill went to the hearing at the Courthouse on January 1-14-1991 and recalled that he waited in the hall for quite a while half hour to forty five minutes, and all of them came out in the hall but down the hall. All of them included all the County Commissioners – Buckey Arbaney and not sure of the other's names, a couple of lawyers I find out now was Fred Gannon and some of the excavators, Frog and Clem and didn't know them all that well but there was a group of 7 – 9, Mark Bean was there also. County Attorney – Don DeFord was there. Fred Gannon was Joe Zamora's attorney – now he finds out that the judge wanted the Commissioners, and the excavators and lawyers to go out and try to reach agreement because it was a real tough situation, property was so expensive, there were no facilities for us to meet and everyone tried to use their best heads to figure out the best the solution for the situation. The outcome was, when they walked down the hall they explained that the ticket had been dropped and that he could continue with their blessing and keep up to 10 pieces of equipment on my 5 acre parcel.

Mike – did the County and Fred Gannon return to the judge's chambers and dismiss those tickets based on the events that took place in the hall? Bill not sure – assumed they did because mine was the first one dropped. Bill went home and continued to do what he is doing today.

Mike – noted that and he was reluctant to put words in the mouth of another public official but he did speak with Judge Gannon and I would say that his recollection of the events is substantially similar to what Bill has related here today. Again, as the lawyer, it is my belief that in 1991 the County in a public judicial proceeding made a site specific determination of property rights up to 10 pieces of equipment on 5 acres or more. He asked Bill how his operation was in 1991 compared to how it is today. Again, as the attorney the County has interpreted it's Zoning Code as to this property and that determination cannot be changed without proper following of due process with an eye on the Takings Clause of the Constitution.

Bill discussed the operations in 1991 and the equipment he owned.

Mike said one allegation is that you are operating a contractor yard and noted there is really not a definition that constitutes a contractor yard the County Zoning Code but presumably that is more than parking equipment on your property. Bill stated that he does not have clients come to his property, the only ones who come are friends; very rarely and since 1983 he has had 5 sets of plans dropped off at his house. Business comes from his good work and word of mouth. 98% of the time he meets clients on site to give them a quote. Clients are not on his property for business. Bill will remove Independent Trucking and the address from the telephone listing in as much as it is relevant. Bill explained the process when he gets a job stating that most generally he wished he had a piece of equipment on his property because when he needs to do something his equipment is not on his property. Winter time is when he has the most congestion on his property and probably has 6 pieces of equipment on the property right

now. When he gets a job the equipment goes from his property to the job site. He supplies a vehicle to his employees, only 3 employees, one vehicle and all three ride together to the job site. Bill said his operation on the property is similar to his operation in 1991. He has continued to operate as in 1991.

Commissioner Houpt – inquired as to the projects in progress and what is his ultimate vision for his property.

Kim – explained and a diagram was submitted for the vision.

Bill Jr. – claimed they didn't know they were taxed as residential.

Chairman Martin – noted there are lots of records in the Assessor's office.

Public testimony.

Bruce Hammer – claimed he was at the hearing in 1991 and also helped with Bills' wood fences. He heard the 10 pieces of equipment were allowed.

Mitch Miller – 25 year friend – aware of the situation – these are honest people and Bill's a good friend – family is a valuable asset to the community.

Barry Dodds-Scott – berm was for drainage and protection of view for neighbors – ran a back hoe – good people and trying to make the County better.

Shannon Muse – friend of Kim's – helps with the gardens – wildflower seeds and helps with donations of the flowers.

Dick Howard – member of the Rotary Club – Bill is very civic minded – building a memorial wall – Bill has donated his machines and no charge – Pearlington, Miss after Katrina, Bill allowed him to borrow a trailer for the contributions – also build and enjoys Habitat for Humanity – excavation for no charge.

Former employee – Don Blevins– worked for two years and recently quit for good reasons, nothing against Bill, Bill's one of the most stand-up people I've ever met in my life – he has good friends around him which reflects on him too. The work he's done for neighbors in the surrounding area is far surpassed any thing ever seen anybody do and doesn't see any reason to do it other than to be a friend and a community neighbor. He's a really good stand-up guy.

Joe Zelenka – have known Bill for many many years – he was talking about the winds in that valley and I did work on his next door neighbor's house and put a new roof on their house actually used what was called at T-lock shingle system where the tabs interlock each other so they would stay in tact and the winds blows very hard and was blowing that particular type shingle off the roof. I had to nail the whole perimeter down, yes, I did lose all my shingles off the roof – it blew bundles off the roof like he was talking about and this was only on a 4/12 pitch it wasn't a steep roof at all. The winds in there are just incredible; I can see where his neighbors definitely appreciate that fence. Nobody could even use it; the wind would blow so bad that you lift the lid it's liable to blow off. I saw the fences go up and have been involved in fence construction for over 30 years and the structural is bullet proof. It would take a big dozer to push them over and the wind won't touch it. So everything he's done has such a back-up reason for it that if it was mine and I could afford to, I would have done the same thing.

David Wanzer – Bill's brother – I can testify to the wind out there, it's incredible – one day we were working on something and had a whole stack of plywood, 15 – 20 sheets and the wind took all of them – there was a boat on a trailer strapped down and it blew the entire thing down on it's side. Incredible wind. And Bill's a good guy.

Rich Cheney – I live across the road from Bill like for 20 years now and most of those wind stories are true plus that shed of his, one day the wind was blowing and before he got it all fastened down it actually took the roof and blew saw roof blow it clear off there in one chuck and put it out in his front yard. It was probably one of his first insurance claims but. We went through raising the pigs and all that stuff and he tore down my old house and dug the foundation for his new house and no dollars were even exchanged. We've always been good neighbors. It's just one of those deals.

Rick Brunty – I work for Bill and haven't worked for a better employer in my life. I've known Bill since 1999 and left for a few years and that's was the worst two years of my life because when I worked for someone else they treated me like a number; I was a nobody. Bill treats me like family; I mean I've never had a better employer in my life. Bill does great, he helps his neighbors out and does a lot of donation and that's about what I can say, there's no better person than Bill and Kim.

Chairman Martin – must remember Kim, Bill's getting too much glory there.

Matt Thompson – I've only worked for Bill for about 4 months; I will follow suit with everyone else, he is one of the best employers that I've worked for. I just recently moved to the valley and since I've been working there I've never seen any kind of commercial plant work or anything like that. So that's all I've got to say.

Chris Beebe – Bill and Kim's neighbor to the north and the presentation, I'm on the other side of the berm. I'm also the guy that's referred to in the original complaint as the neighbor who tried to handle this in a diplomatic way within the neighborhood over the summer months and kind of ran into a log jam and I think it was August or September with Bill in my yard and in the street. First off I'd like to acknowledge the Vezzoso's efforts to mitigate the visual consequences of their operation. The berm was put in the spring before I moved in which was 7 years ago. Bill and Kim have made a good faith effort to vegetate it in a responsible and aesthetic pleasing way. My thoughts on addressing the County on this are pretty hard to describe – I understand that Bill has had an operation for some time and Bill has done some work for me – he dug my foundation too when I redid my house and I've got some of his fill on my property and I paid him for it and I'd be glad to prove that if that's important. The challenge that my family and I have is the proximity to a full blown excavation operation which is not going to get solved by changing an address in a phone book. Most days including weekends, I can't open the windows of my house without it full of diesel fuel and dust. My wife called me from work the other day to say that she heard back up alarms in her brain having been home for two days and having to listen to that noise while being sick. I don't doubt though in Kim's community service- they've been a big service in the neighborhood and on the ditch. But the zoning ordinance is clearly state that what's going on there is against the County's laws or your rules or ordinances or regulations, whatever and I think it's a disservice to the community to allow this kind of operation with employees coming and going in heavy equipment, I have witnessed full dump truck loads full of perfectly good looking fill leaving the property having been screened and I'm around my property quite a bit – I've witnessed a lot of things that would imply that there's a full blown construction yard going on there and my little speech here is probably going to cost me about \$10,000 in rerouting my ditch which Bill has threatened to shut off. That's another issue. But I guess I'm willing to put my neck out on the line, obviously Bill's got a lot of support here current and past employees some of

which have worked for me or friends. But it's disappointing to have come to this because we tried to handle it within the neighborhood with some of the people who are in this room today and that was met with threats and bullying and intimidation and I'm frankly done with that portion of the process. That's all I have.

Chairman Martin – remember to keep it civil and not attack individuals, if there is something pertinent.

Bill Jr. – No, I just wanted to convey our community philosophy that I grew up with my parents being, especially being back and helping them out a little bit, is since this is a public meeting we want to extend to all or our neighbors and anyone in our community to have an open channel with us, if they have any complaints we are willing to do what is possible to kind of meet in the middle and see where to go. So I just want to encourage that they can go ahead and call us or email us or send us a letter and we are willing to listen.

Chris Beebe – can I share my experience with that process with the Vezzoso's?

Chairman Martin – if you wish to but everybody remains civil.

Chris Beebe - this summer the Vezzoso's pit bull was in my yard growling at my daughter and her caretaker, I called Bill to ask him to come and get the pit bull out of my yard and four hours later after being screamed at and threatened and intimidated for four hours literally in my yard, that was the process of open communication that may be disinclined to open up another conversation with Bill about this issue which was obviously far greater of magnitude than a pit bull being in my yard and I interested in going on this alone and that's why I started to pick up on some ongoing conversation within the neighborhood about the issue of the construction yard being in operation and Bill finally got word of that and came and we had another blow out in my yard. So it's nice to offer an extension of open lines of communication but they haven't been very fruit full and they haven't been very civil and they haven't been very encouraging. Commissioner Houpt – I have a question of you, you said that you've witnessed loads being hauled out from Bill's yard.

Chris Beebe – yes, that's correct.

Commissioner Houpt – Do you know how often this has occurred that you've witnessed it?

Chris Beebe – I would say, and I'm not there all the time and I'm not there to count trucks going by but I would say in the true operational months for excavation being probably late February to November or so, over the last 3 – 4 years there's been an average of 10 to 15 business trips, vehicle trips, heavy equipment either being towed out by, coming back in back in by dump trucks or materials being hauled in and out by dump trucks, sometimes its slash from job sites that gets stock piled in the back yard and then burned for all day – but again I'm not in the business of counting traffic trips but its significant.

Commissioner Houpt – asked Bill to respond to materials coming in and slash, etc. to get a better understanding of why materials would be coming in unless they were being brought in to fill your pastures.

Bill – at the end of the day a gravel pit will close at 4:00 – 4:30 and we don't have to stop working till 7 pm – load of legally so a lot of times if I need a load of gravel first thing in the morning before the pits open, I have my truck go by, get a load of gravel and leave it on the truck, park it at the yard, plug it in and then in the morning the gravel goes where it is supposed to go.

Bill Jr. – Mr. Beebe is referring to some of the degradation of communications in the past and that's one thing I will personally try and offer an intern for because we need to strive for more communications because a lot of the reason we are here today is from mis-interpretations of the property and the uses of the trucks that we have on our property. When they are being used, specifically the fill is being used for agricultural fill of our pasture reclamation. There are a lot of other small issues that are assuming just because a truck has fill in it that it's on business. That's necessarily true, we deliver a lot of materials for donation and also give a lot of materials to our neighbors and try and pick and say from an outside perspective what's going on would be difficult at best and offered at this point going forward is a way to open the communication lines so there is no confusion between a neighbor or the community or the Board.

Commissioner Houpt – under what circumstances would you bring material in and burn slash?

Bill – no circumstances that he has brought material to my property except for my property. My brother may have come by and needed a load of dirt for his house in Silt and I'd give it to him. There have been other trucks but they've always hauled in because I needed the dirt and you can contract DUI, Aspen Earthmoving, they helped me build the first berm just like free fill dirt where you see it advertised all over. I've got better connections than most and when I need dirt I have a lot of good friends I help out and then return the favors.

Kim – the burning piles, when you live on 5 acres you collect garden waste, fences and things that don't work and we save it and burn once a year – call the fire department, get their blessing and burn at once. It's not something we brought in from somewhere else to burn.

Carolyn Dahlgren reminded everyone – this is not a public hearing as we've said before. She addressed her questions to the table.

Carolyn – this is not a public hearing – address the questions to the table. We did mark these photos as exhibits but in the picture that has your new barn and your old barn, it looks like a port-a-potty there and why would you have a port-a-potty.

Bill said my men need a place to go to the bathroom.

Carolyn asked then if Bill didn't let them come into his house. Is this your employee going back and forth?

Bill uses the portable potty for himself and his family as well when they have muddy boots, etc.

Carolyn – confused about the location of front fence, is it on your property line. In your statement you said it was right on the property line.

Bill said it was inside the property pins and the outside 15 feet is my ditch easement.

Carolyn – You described in detail how you put these walls together with rebar and such, so did you do this on your own or did you have actual engineering drawings.

Bill has worked with engineers all his life building project but didn't know he needed an engineering, he thought he was constructing an Ag fence to keep horses in and protect them from the wind and tried to build it at 6 feet and he was not aware he needed any permit to put up an agricultural fence.

Carolyn – when you talked about the going to court in 1991, I thought you said the Commissioners plural, were you saying that all three of the then sitting Commissioners were there, not just Buckey Arbaney.

Bill wasn't sure all of them were there, just Buckey Arbaney and he was the man who made the decision.

Mike – clarified when Bill was present at the court, you did not actually hear Buckey Arbaney make a decision with the County Attorney at that time, but rather Buckey came back to Bill and said ...

Bill said Buckey told him the ticket was dropped and he could continue to do exactly what he was doing as long as I don't get over 10 pieces of equipment.

Carolyn – asked the same question of the first member who spoke - Bruce Hammer – your statement was that you were present at the courthouse.

Bruce – went down to the courthouse with Bill and was helping Bill build his fences. Mr. Arbaney came over and told Bill to carry on, they dismissed his ticket.

Carolyn – they are just Buckey.

Bruce – didn't know who the other Commissioners were. That was 18 years ago.

Carolyn asked Bill Sr. – you said he could work till 7 pm legally, what is that 7 p.m.

Bill – in Garfield County and in most like Aspen Glen, equipment is loud and he knows it but there are standards and the basic standards with the city and county is 7 am – 7 pm.

Mike clarified if this meant his own property or on job sites.

Bill – on job sites, he has never applied this to his property. He hauls snow for the City of Aspen.

Commissioner Houpt – so much said today and she is confused about the activity because she is hearing from a neighbor that there seems to be constant movement of equipment throughout the day and that it's really disturbing and then hearing from Mike's client that he leaves in the morning so what is happening on the property during the day?

Kim – is there all the time and when the equipment is working and they hear the noise, it is working for me – she is using the equipment on her property, when it's gone working for somebody else. Billy was just trying to explain that when you're outside looking in, you're thinking they are working all the time for everybody else but when the equipment is not working for her or somebody else it is sitting.

Mike – generally when he does a job the equipment goes to the job site and stays there for the duration of the job. Do you occasionally import fill from a gravel pit to a job site, and do those dump trucks return home overnight and then get taken to the job later in the day.

Bill – just overnight. It's like any construction job, it's not easy to say I need 6 more loads of dirt to finish the job, okay you guess and bring 6 loads to the job, and it took 3 to finish it.

It would go home and the dirt would stay on the truck and leave to the next job.

Commissioner Houpt – so you would store materials for the next job.

Bill – the dirt would stay on the truck, go home, stay loaded and leave to the next job where it can be used.

Bill Jr. – we would not actually unload the material rather leave it stored in the vehicle to go to the next job.

Commissioner Houpt – even if you had 3 loads, 3 trucks?

Bill Jr. – if there was more than one load it would stay on the job site.

Bill – the whole brunt of the traffic was bringing the dirt in.

Mike – by saying that you are saying a lot of the traffic that people have discussed here today is relative to the fill that you've brought into your property. In order to do the green area shown in the photographs, how many trucks of fill were necessary to provide that amount of earth?

Bill – what's been done is approximately half – approximately 150 loads hauled in.

Billy – no one inquired what the fill was for and our plans – no inquiries as to what it was used for.

Mike – Carolyn raised the concern of the port-a-potty on the site; historically you testified earlier your employees will come to the property, take the stored equipment to the job site or car pool to the job site together, is that consistent with the operation that occurred in 1991.

Bill – yes sir.

Charles Cady – not acquainted with Vezzoso but has lived there since 1978 and recently the construction activity has greatly increased and would like today at some point is some clarification on what the zoning really is, over the year it has been handed back to us. My understanding is that a quite a few of the things built on his property were not permitted and what's going to be done about that and as far as I know the 10 vehicle rule was never written down or there's no record, I would like clarification on where this came from and I'm counting on the Commissioners to straighten this out.

Carolyn clarified that she had asked Mr. Beebe a question due to a comment Bill Jr. made and wanted him to make a statement to the Board that he was not the author of the anonymous letter.

Chris Beebe – I did not file the anonymous complaint dated 11-29-2006 but I am the person referred to in the complaint as the person who has tried to work this out within the neighborhood and was met with intimidation and bullying and so on.

Bill Jr. – responded, with that from this point going forward we really want to make it clear that we want to have the channels of communication open and if you want to go through me, you are welcome to do that. There is a lack of communication and want this cleared up.

Chairman Martin - Staff has requested finding for the County Attorney for abatement of actions concerning the building and zoning violations. What is the pleasure of the Board?

Commissioner McCown – we were given an overwhelming amount of information that was not in his packet to read prior to this meeting not to mention all the testimony that's been given here today. He suggested at least on behalf of the staff and County Attorney's office there needs to be some research done on the background on some of the statements that were made today so a motion was made to continue this 30-days forward and that would be to March 5, 2007 at 1:15 p.m.

Commissioner Houpt seconded.

In favor – Houpt aye McCown – aye Martin – aye

#### **PUBLIC HEARINGS:**

**BUILDING AND PLANNING: CONSIDER A SPECIAL USE PERMIT FOR “STORAGE AND MATERIAL HANDLING OF NATURAL RESOURCES.” APPLICANTS: GENE AND GAIL MULVIHILL – CRAIG RICHARDSON**

Wagon Wheel Consulting Cody Smith – Carolyn Dahlgren and Gene Mulvihill were present.

Carolyn reviewed the noticing requirements for the public hearing and determined they were timely and accurate. She advised the Board they were entitled to proceed.

Chairman Martin swore in the speakers.

Craig submitted the following exhibits: Exhibit A –Mail Receipts; Exhibit B - Proof of Publication; Exhibit C – Garfield County Zoning Regulations of 1978 as amended; Exhibit D –Staff memorandum; Exhibit E -Application materials; Exhibit F – Memo from Chris Hale P.E. of Mountain Cross Engineering, Inc. dated 1-30-07; Exhibit G – memo from Garfield County Vegetation Management dated 1-30-07; Exhibit I – memo from Steve Fontenot, Antero Resources, dated 1-24-07; Exhibit J – Email from Garfield County Road and Bridge dated 1-31-07. Chairman Martin entered Exhibits A – J into the record.

Craig submitted the request stating that Wagon Wheel Consulting submitted an application for a Special Use Permit (SUP) to allow “Storage and Material Handling of Natural Resources” to the Building and Planning Department on December 15, 2006. The subject property is owned by Gene and Gail Mulvihill and is located northwest of the City of Rifle, off of County Road 233. This application is intended to allow temporary storage of produced water in an existing pond created for a drilling operation.

The Application was referred to the following various agencies and County Departments for comments.

The operation of this facility will not require additional utilities.

State Highway 13 and Garfield County Road 296, 291, and 233 are the access routes traveled to and from the sight. Garfield County Road and Bridge Department has no objections to this application and cited that they currently have a road repair and improvement agreement with Antero for the listed roads. Traffic generated from this proposed use is represented not to exceed 31 round trips per day.

The character of the land surrounding the pond is farming, livestock grazing, and natural gas development. Located in a remote location within the property, the use of this pond for temporary storage should not have an impact on adjacent properties.

The pond is lined with an anchored geo-synthetic liner. The Applicant has stated that no more 36,690 barrels of water will be stored in the pond at any time in order to maintain a minimum freeboard of 2 feet. Kevin E. Milliman, a Colorado Registered Professional Engineer, has determined that the existing berms are designed to hold the amount water proposed by the Applicant. The Applicant has agreed to place a monitoring well to be located down gradient from the pond to monitor ground water for contamination. The Sill Prevention Control and Countermeasure Plan provided by the Applicant states that the operator will conduct a weekly inspection of the facility. The inspection will include a visual inspection of the liner, berm and fluid level. A weekly inspection will help prevent the risk of discharge or failure. Staff also recommends that this inspection also include documentation from the ground water monitoring well.

The operation of the proposed storage pit is not expected to generate vapor, dust, smoke, noise, glare or vibrations. The only activity at this site associated with the SUP will be the transportation of water to and from the pond.

A livestock fence has been constructed around the pond. In order to eliminate the risk of wildlife contact with the pond, the Applicant will be installing an anchored net covering the entire pond. These measures will reduce the risk of potential impacts on wildlife and domestic animals.

The Applicant has represented that one daily round trip per day is expected for a “pickup” that will occur along State Highway 13, and Garfield County Road 296, 291, and 233. During a “worst case scenario” traffic volumes are expected to reach at a maximum 31 round trips. The application does not contain a formal traffic study or explain the methodology used to calculate this estimate.

The utilization of the existing pond to store produced water on temporary basis does not appear to have an impact on adjacent property or nearby residences. The pond is located in a remote location.

The Applicant has represented that this facility is in compliance with all Federal, State and Local regulations. The Applicant has addressed Staff’s concern of the potential hazard of ground water pollution. A monitoring well will be placed down gradient from the existing pond in order to detect ground water contamination. Conducting weekly inspections on the site will help insure that these standards continue to be met.

Should the Board approve the request for the Special Use Permit, Staff suggests the industrial performance standards be considered conditions of approval as they are specifically intended to ensure that any industrial use such as the proposed facility function in accordance with the proper best management practices and within the parameters of the State Statutes.

#### STAFF RECOMMENDATION

Staff recommends the Board of County Commissioners APPROVE the request for a Special Use Permit to allow “Storage and Material Handling of Natural Resources” for a property owned by Gene and Gail Mulvihill with the following conditions:

1. That all representations of the Applicant, either within the application or stated at the hearing before the Board of County Commissioners, shall be considered conditions of approval unless explicitly altered by the Board.
2. That the operation of the facility be done in accordance with all applicable federal, state, and local regulations governing the operation for this type of facility.
3. The Applicant shall provide the Garfield County Vegetation Management Director with a revised Weed Management Plan, conducted after the start of the growing season. The revised Plan shall be

- submitted by May 15, 2007.
4. Volume and Sound generated shall comply with the standards set forth in the Colorado Revised Statutes at the time any new application is made.
  5. Vibration generated: Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point of any boundary line of the property on which the use is located.
  6. Emissions of smoke and particulate matter: Every use shall be operated so as to comply with all Federal, State, and County air quality laws, regulations, and standards.
  7. Emissions of heat, glare, radiation, or fumes: Every use shall be so operated that it does not emit heat, glare, radiation or fumes which substantially interfere with the existing use of adjoining property or which constitutes a public nuisance or hazard.
  8. Water pollution: Installation of safeguards designed to comply with the regulations of the Environmental Protection Agency must be completed before operation of this facility may begin.
  9. The Applicant shall install a ground water monitoring well located down gradient from the existing pond before the issuance of this Special Use Permit.
  10. There will be a maximum of 31 daily round trips associated with this use.
  11. The Applicant shall demonstrate that a net covering the existing pond has been installed to help reduce the risk of potential contact with wildlife.
  12. The pond shall maintain a minimum of two feet of freeboard at all times.
  13. The Applicant shall cut and treat the tamarisk cited in the Noxious Weed Management Plan before February 28<sup>th</sup>.
  14. The Operator shall conduct and document weekly inspections of the facility.

Commissioner Houpt – in the findings we talk about dust and vapor. You basically say that none is expected but no analysis behind that. One of the big problems with ponds in this area for produced water is the vapor issue and asked Craig to expound.

Craig said staff discussed this and we couldn't foresee any of these items being an issue.

Commissioner Houpt will wait and ask the applicant about the components of the produced water. This vapor is a big issue and would like to see us pay a lot of attention to it.

Cody – this is an existing pit that was originally tied in with the well pad and used for the fracing back flow waters from that existing well. Since then Antero has needed to it for additional storage in emergency cases where if they had too much water and no place to use it on their frac and their flow backs for their continued operations to store it temporarily until it is needed again. Steve can answer how long this water will sit there for his operations.

Steve – the Netting, we are planning to anchor that to the berms as to eliminate any risk of any wildlife, livestock, migratory birds, and water fowl from entering that pond. That takes out the need for an egress ramp which was additionally asked as a condition of this SUP. With this going to the ground there is no need for that. We are planning on putting a ramp on the outside of the pond to make it easier for human beings to walk up and down for unloading water. We do have existing fencing keep out the wildlife and animals but the netting isn't installed yet – it is on order and should have it any day.

Cody said as for the monitoring well as stated by staff, “to install a ground water monitoring well located down gradient from the existing pond before issuance of the SUP” – we would like to go to work immediately; this is being permitted with Division of Water Resources for that monitoring well and they are behind in their permitting and have told Cody 30 days but it's been longer than that and he has not heard. We do still plan on installing it but then need for Steve and Antero Resources is extremely important and they need it now to put this water in instead of trying to find different places to haul it off. He asked the Board to look at allowing them to go to work immediately.

Commissioner Houpt – there has been a lot of vapor and odors coming off ponds around the County that hold produced water because of the condensate and when she sees a paragraph in a report and it says nothing is anticipated that's probably true with the other operators who've had problems as well. What will keep this from having the same problem?

Steve – the location of this site as such that it is elevated approximately 100 feet above the area just to the east where the prevailing winds typically go from west to east and there have been no complaints of odors in the past; a large part of that is that it dissipates so rapidly being on top of that plateau; the other thing is that we monitor daily the flows transported in there and if there's any hint of condensate or oil we have oil booms that are set out and we have roust about crews that basically collect that, not on a weekly basis but on a daily basis as needed. That's one of the resulting SUP requirements as a result of the fire that BBC had up there due to the condensate so I'm cognizant of that issue and the last thing we want to do is create any problem like that so as a result we will do this on a daily basis to ensure there is no accumulation of hydro-carbons in that pit.

Scott Balcomb – wants to support it so they won't have frac tank pollution which is the problem we have right now – they're all over the place and I think this is badly needed.

Carolyn – in response to the Cody's request on the well permit issue – your regulations at Sub Section 6 of 5.03.08 Industrial performance standards do say that all ground water tests as maybe required have to be met before operation of the facilities begin and that safeguards need to be in place before operation of the facilities may begin, so I would request more information on what kind of testing has already occurred down gradient if any.

Cody – there has been none besides doing basic water wells around the community. Antero has done for the landowners below the pond and around, ½ mile radius of a well site and other than that no other ground water monitoring systems around this.

Carolyn – asked if they were specific to this original well and pit? Could you prove up that water testing as to this location?

Steve – the testing that was done was specific to this particular well called the Lungrin A1, and all water wells within ½ mile radius of this particular site were tested and the results and can be provided to the Planning Department. All we're doing is baseline water well testing for the landowner and for our benefit as well. Cordian is an independent environmental consulting company that does the testing for us and what that basically provides a baseline of a water well quality and quantity so that we can insure if there's any impact at all to water wells based on any of our activities, we have a baseline of data showing how the wells were acting before they started. They have

done the baseline data at least once a year and in this particular area they have done this every 6 months. No changes from baseline have been detected.

Public Comments:

Candy Branson and I live on CR 233 and two questions: one is if they have done any pre-air testing for contamination of the air in the area?

Steve – no air quality monitoring in that area but have done that on the south end but not at this Candy – when you posted your signs you posted them on the Rifle side of 233 Road, not on the Silt side.

Steve said he posted the sign on the Rifle side as it is the only entrance into this site.

Candy – so you’ll be using Rifle as an entry, not the Silt Mesa Road.

Steve – the Rifle entry and not the Silt Mesa Road.

Candy – is CR 291 the road that comes by Wamsley.

Cody – CR 291 comes off of North of Wamsley from Hwy 13.

A motion was made by Commissioner McCown and seconded by Commissioner Houpt to close the public hearing; motion carried.

A motion was made by Commissioner McCown to approve the request for a SUP to allow for storage and material handling of natural resources with condition 1 – 14 as recommended by staff; personally do not have a lot of concerns about them starting use on this facility prior to the drilling of the monitoring well considering if they are doing water testing every 6 months on adjacent water wells around the area but I would still leave that as a condition of approval that upon receipt of that drilling permit I would expect the monitoring well to go in.

Commissioner Houpt seconded and said that if there hadn’t been testimony indication that this is going to be monitored very closely I would have a real problem with it. I anticipate you will call them and urge them to get this to you if the vote is positive today.

In favor: Houpt – aye McCown – aye Martin – aye

Chairman Martin asked if Jesse knew if Jim Rada has this area under air monitoring control – north and east of Tybar.

Jesse was not sure but did confirm that air testing is going on.

Commissioner Houpt would like to have this determined.

**Continued Executive Session – update on Silt litigation; advice on RETAC and contract; IGA with Glenwood for South Bridge and other traffic issues; discuss the Impact report and two County Road projects CR 204 and CR 241 and Parachute Trail; and Jesse wanted to talk about the HR process.**

Commissioner McCown made a motion to go into an Executive Session to complete the discussion and legal advice for the above mentioned items. Commissioner Houpt seconded; motion carried.

Commissioner McCown made a motion and Commissioner Houpt seconded to come out of Executive Session; motion carried.

**Public action – Agended Item**

***F. Discussion of Northwest Regional Emergency Trauma Advisory Council (RETAC)***

Don – the proposed intergovernmental agreement forming an entity to operate under the name of Northwest RETAC, Larry has been attended these meetings with benefit from the County Commission on this.

Commissioner McCown said he will carry your banner forward.

Commissioner Houpt made a motion that the County’s position is not to participate in the formation of such an entity at this time since we lack statutory authority to undertaken upon us. Chairman Martin seconded.

In favor: Houpt – aye Martin – aye McCown – aye.

Larry will carry this message.

**ADJOURNMENT**

ATTEST:

CHAIRMAN OF THE BOARD

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