

handle it, whether to bring it back as a work session with the Board regarding previous Section 6 and the water issues. Staff had no problem having the work session on the previous Section 6 and what the Board could or could not do and the peripheral issues that the request was based on; however, she and Castrodale would advise the Commissioners not to delve too much into the pending water matter. It was not an issue for the extension they were requesting. Commissioner Albritton advised Sellars that the Commissioners had discussed this earlier in the meeting and they definitely would like to have a work session to understand the County's obligations as far as previous and existing Code. The work session was set for February 15.

Connie Hunt, County Administrator, discussed the following:

- 1) **Bond Release** She asked the Commissioners for permission to release a Performance Bond for Coral Bell Estates for road infrastructure under the Planned Unit Development Agreement. The cash bond was being held in a suspense fund. She had received a Staff Report from Mark Castrodale, County Planner, and Chris Miller, Road Superintendent, signifying that everything had been met. She asked for a motion to authorize the release and Chair's signature. She would put it on the next meeting agenda for ratification. Hunt added that the County was still holding a revegetation bond for Coral Bell Estates.

M/S/P—Motion was made by Commissioner Fedel and seconded by Commissioner Padgett to approve and authorize the Chair's signature on the release of a Cash Performance Bond for the Coral Bell Estates PUD roads and infrastructure as recommended by Staff. Discussion. Commissioner Padgett noted that a Certificate of Completion had been issued by Chris Miller and dated January 3, 2012. With no further discussion, the motion passed unanimously.

- 2) **Cornerstone Liquor License** The Clerk and Recorder had received notice from Tom Kennedy with Cornerstone that Cornerstone was cancelling its liquor license. Michelle Nauer, County Clerk and Recorder, would contact the State and would email Brian Wallin with Cornerstone to explain that by cancelling the license the new owners would need to reapply. Commissioner Albritton suggested that the Commissioners needed some understanding from Staff as to what the change of ownership did to the Development Agreement.
- 3) **NACo Report** A report from NACo (National Association of Counties) discussed the total prescription drug card savings by residents of \$627.40. For 2010, it was \$458 and for 2009 it was \$571. It also provided a history of Ouray County's PILT. Commissioner Padgett wanted Public Health to order more of the cards and put them at the Ridgway Food Bank and in each school child's folder. She wanted to piggyback that on the WENS notice.

Commissioner Padgett discussed the following:

- 1) **CCI Update** She attended CCI last week and updated the other Commissioners about several proposed bills. There was a coalition of Counties interested in signing their names to a Good Samaritan bill concept to send to NACo.

Commissioner Fedel had nothing to discuss:

Linda Munson-Haley, Clerk of the Board, had nothing to discuss:

12:28 Executive Session:

M/S/P—Motion was made by Commissioner Fedel and seconded by Commissioner Padgett to enter into an executive session pursuant to C.R.S. § 24-6-402(4)(b) for a conference with the County Attorney for the purpose of receiving legal advice on a specific matter regarding the Gunn tire issue.

A roll call vote was taken on the motion with the following results.

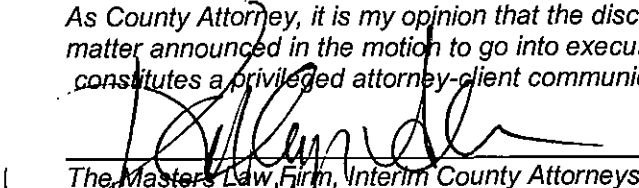
Commissioner Albritton voted in the affirmative

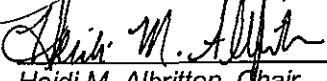
Commissioner Fedel voted in the affirmative

Commissioner Padgett voted in the affirmative

There was no discussion. Motion passed unanimously.

As County Attorney, it is my opinion that the discussion of the matter announced in the motion to go into executive session constitutes a privileged attorney-client communication.


The Masters Law Firm, Interim County Attorneys


Heidi M. Albritton, Chair

Those present for the executive session were Interim County Attorney Kathryn Sellars; Commissioner Albritton; Commissioner Fedel; Commissioner Padgett; and Connie Hunt, County Administrator.

12:30 The Commissioners entered into executive session:

1:11 The Commissioners reconvened into regular session:

Commissioner Albritton explained that the Commissioners received legal advice during the executive session regarding the Gunn tire matter. No decisions were made. No action was taken.

1:12 The Commissioners recessed for lunch and reconvened at 1:30:

H. 1:30 Continuation of Public Hearing from December 6, 2011:

1. Laurence Gunn:

Purpose: Notice and Order to show cause concerning removal of rubbish

Property Description: The E½ of Section 11, Township 46N, Range 8W, the NW¼; the N½ SW¼ of Section 12, Township 46N, Range 8W; and the N½ NE¼ of Section 14, Township 46N, Range 8W.

Mark Castrodale, County Planner, and Bryan Sampson, Planning Technician, were present. Ron Mabry, Weed Manager, was present. Laurence Gunn and his Attorney, Amy Ondos, were present.

Commissioner Albritton reopened the public hearing and noted that the Commissioners had been copied on a letter dated January 5, 2012 from Amy K. Ondos to Jeff Emmons with the Colorado Department of Public Health and Environment (CDPHE) requesting an extension of time until April 15, 2012 to provide the reports requested in the CDPHE September 16, 2011 Compliance Advisory (*Gunn Exhibit H-1*), and a letter dated January 11, 2012 from Susan Bachini Nall with the Army Corps of Engineers to Laurence (Butch) Gunn (*Gunn Exhibit H-2*). [*The Notice and Order dated October 5, 2011 to Lawrence Gunn and Bertha Gunn was entered into the record as County Exhibit H-1.*]

Ondos explained that the CDPHE had extended the deadline to January 16, 2012 in a letter dated November 1, 2011 for her client to provide a detailed report of all of the cleanup efforts and a closure plan to include a proposed plan to close all solid waste disposal areas on the Gunn property and to remove the tires already released to the affected waterways as a result of the July 26, 2011 storm. Her January 5 letter asked for a continuance because tires in the Burro Creek area on property owned by the Department of Parks & Wildlife (DPW) were not currently retrievable because of winter conditions. The closure plan would have to wait until the tires were cleaned up once the weather cooperated. Neither she nor her client had heard back from the State yet. She and her client, therefore, were asking for a continuance by Ouray County to resolve the issues with all of the other three agencies. She sent a request to the Army Corps of Engineers (Corps) about the same time as her request to CDPHE to see a copy of their file to make her file more complete. She expected to have the information back from the Corps by mid-February. She disputed whether or not the Corps had jurisdiction on this portion of the Gunn property and wanted to see what that claim of jurisdiction was based on. CDPHE was requesting a cleanup and closure plan: clean up of the tires that had been released and a closure of what they deemed to be a solid waste disposal. Ondos explained that they had not submitted the documentation because they were not entirely convinced that the tires on the Gunn property were a solid waste disposal. The CDPHE had only given Gunn a two-month extension from the previous deadline and that was not enough time to hire an engineer to determine if the tires needed to be removed, if the land was stable enough, or whether engineering needed to be done. Her client still had not found an engineering firm.

Commissioner Albritton clarified that according to Ondos's correspondence with the CDPHE on January 5 the only tires remaining in the water were on DOW property.

Ondos replied yes. Her understanding was that the tires were not still in the water but on the banks. The banks were steep and treacherous in the winter.

Commissioner Albritton asked if Ondos and her client were confident that all of the other tires had been removed from the river. Ondos said, yes, to the best of their knowledge. There were still a few calls coming in and her client was cleaning up the tires as he became aware of them.

Commissioner Padgett asked who fielded the phone calls that came in.

Ondos replied that the public was asked to call Maynes Tire who would coordinate with Mr. Gunn.

Commissioner Fedel asked how many tires were on the banks at Burro Creek. Gunn said roughly 50. Ondos added that according to Dave Hale with the DPW there were about 70.

Commissioner Padgett asked what Ondos's definition of "weather cooperating" was.

Ondos replied that it was when Hale told them to come to get the tires. He had been concerned about damage to plants and the public lands. The access was difficult and unsafe. Hale said that the tires on the banks were stable and he did not think they would move.

Commissioner Padgett asked about where the calls were coming in from.

Ondos replied as far north as Montrose. She did not think that all of the tires were a result of this incident. The calls had been infrequent as of late. Gunn added that they were using a Polaris Ranger to get the tires.

Commissioner Albritton asked for public comment.

Ron Mabry, Weed Manager, explained that he was concerned with the cleanup efforts. The pictures showed that Gunn had disturbed a lot of land trying to cover the tires up. There needed to be a revegetation and reseeding plan. Gunn said that he had been reseeding. Mabry added that he was concerned about the weeds with the disturbance of the ground. He would be recommending a Weed Management Plan as part of the mitigation efforts.

Sellars asked about Ondos's comment that they were not sure that it was a solid waste disposal site.

Ondos replied that it was more of an erosion control method as opposed to being solid waste.

Commissioner Padgett asked if that was why they did not have an engineer.

Ondos said no, they were hoping to have an engineer soon. They were waiting to get information from the Corps. If the Corps was not involved and her client was just dealing with the State, things would be easier to get done.

Commissioner Padgett asked about problems finding engineers.

Ondos said that the engineers had to have a specialty with soils and erosion control.

Dudley Case was wondering if there was any estimate as to how many tires were buried on the property and how many were susceptible to being flushed out with heavy rains.

Ondos replied that they did not know. Tires had been added for twenty years for erosion control. Their position was that the buried tires would not go anywhere. Case asked if that was based on the opinion of an engineer. Ondos replied no. Gunn added that it was based on the fact that they had been there for years and had not moved.

Commissioner Albritton noted that regardless of whose requirements, both entities would require an engineer. The Commissioners were trying to figure out why things had not moved along any further than they had. The Commissioners had stated that they did not want to be a separate and additional layer with mandates and requirements. Ultimately, everyone wanted the same outcome of cleaning up the site and the river. There was clearly a difference of opinion as to what constituted a solid waste disposal site. That was why the Commissioners were willing to wait for the recommendations from the State. If Ondos and her client were not giving the State the information it needed then it was problematic for all of the entities involved who were all trying to coordinate their efforts. Ondos and her client were asking for continuations but the Commissioners needed to see some tangible evidence of steps they had taken to move things forward. They needed to have an engineer. The fact that they believed that the tires were erosion control had not been backed up by anything or based on any scientific study of what was on the ground there. Ultimately, there had to be an engineer involved.

Ondos said they understood that but Mr. Maynes had knee surgery last month...

Commissioner Albritton pointed out that the incident happened last summer. Everyone had been trying to buy time and spread out a little to allow all of the entities' processes to move forward but they were reaching a stage where all of the processes were getting backed up. She warned that they would reach a point where they would all slam together at the same time. She encouraged Ondos and her client to actively take steps to work with the entities to comply with their requests. If they did not do that, each of the entities would get to the point where they would start mandating their own specific requirements. Obviously, the County wanted to work with Ondos and her clients to get it cleaned up; however, they were told that it could not be done during high water last summer and was put off until the low water came. Soon it would be runoff again and another summer season. The Commissioners needed tangible signs that they were moving forward on this.

Matthew Jurjonas with the Uncompahgre Watershed Partnership asked if Gunn and Maynes were keeping track of how many tires were being recovered from the river in the cleanup effort. Ondos said that Mark Maynes had a map. Jurjonas asked if they knew how many in total. Ondos said that Maynes knew. Jurjonas asked if Maynes was disposing of the tires. Ondos explained. Jurjonas asked if the information would be public about how many tires were recovered. Ondos affirmed that that was part of the cleanup plan from the State.

Commissioner Albritton expressed frustration with the parties here today and with the State.

Commissioner Fedel was okay with a continuance.

Commissioner Padgett wanted to see some progress between now the date of the continued hearing, not only in the waterways but at the source.

Commissioner Albritton referred to Ondos's letter to the CDPHE asking for a continuance to April 15, 2012. She suggested continuing the public hearing to March rather than April because of spring runoff.

Commissioner Padgett wanted it sooner and suggested March 13. The continued hearing was set for 1:30 p.m. on March 13, 2012 at the Courthouse. She asked to receive status updates as to how Ondos and her client were progressing in finding an engineer, in meeting with the CDPHE, in resolving differences with the ACOE, and any progress made in getting additional tires out of the waterways.

Ondos advised that some of the letters from the State were being copied to Connie Hunt. Ondos added that she would also provide updates.

Commissioner Fedel thought that March 13 was a good compromise. The State needed to respond.

M/S/P—Motion was made by Commissioner Fedel and seconded by Commissioner Padgett to continue the public hearing until March 13, 2012 at 1:30 p.m. at the Ouray County Courthouse in Ouray with the condition that the Commissioners receive a status update from Gunn by February 21, 2012. There was no discussion. Motion passed unanimously.

Commissioner Albritton continued the public hearing.

I. 1:48 First Reading of proposed Ordinance Authorizing the Identification of “Red Flag” Fire Days and Establishing the Ouray County Open Burning Notification System for the Purpose of Safely Disposing of Slash:

Commissioner Albritton explained that this was the First Reading of a proposed Ordinance authorizing the identification of Red Flag Fire Days and establishing the Ouray County Open Burning Notification System for the purpose of safely disposing of slash. Since the Commissioners' last discussion she had received feedback from members of the public concerned about this ordinance. She wanted to reassure them that this original unfunded mandate from the State excluded ag operations.

To further allay concerns by the public, Commissioner Padgett added that the State legislation said that ag was exempted. This meant that a Commissioner could not change it; it would take an act of the legislature to change it.

Commissioner Fedel asked if it took four pages to have the absolute minimum to comply. Sellars said yes.

Commissioner Fedel asked about the education piece. Commissioner Albritton explained that the Commissioners had agreed at the last meeting to put something like a brochure at Land Use, and the County already has a plan with Chris Barth with a grant-funded position and the County supported those efforts and the position. That position was already doing outreach. Commissioner Padgett recalled that Barth said that he would supply Staff with information to comply with the bill.

Commissioner Albritton explained that instead of a permit and a fee the Commissioners opted to do a notification process for landowners to notify the County when they planned to burn on their property. That was the minimum the County could do. Representative Coram, who was Ouray County's Representative at the time of the bill, was the House sponsor of the bill. His point-of-view was that he thought it would help wildfire mitigation in the counties. She suggested that he should have reached out to the Counties before sponsoring the bill. He owed it to his constituents to find out a) if they wanted it, b) can they fund it, and c) can they manage it once it was in place. Today was the First Reading.

Kathryn Sellars explained that she had tried to beef up the ag exemption to be stronger than the State language based on the concerns the Commissioners had heard. Sheriff Mattivi and Kim Mitchell, Chief Paramedic, addressed the WENS concerns with Montrose Dispatch who said that it was fine. Staff will recommend an amendment with the addition of Section D to say that if an individual could not contact the Ouray County Sheriff's Office they must call Dispatch for notification purposes.

Commissioner Padgett wanted it to say that they always call Dispatch.

Sellars suggested a modification of Section 6A to say individuals conducting slash burning shall notify the Montrose County dispatch at 970-252-4023 when the burn begins and when the burn ends each day. Montrose Dispatch will inform each person making notification whether that day is a red flag warning day. The remainder of Section 6 would remain the same. This amendment would be made and the amended ordinance would be brought back for the Second Reading.

Commissioner Padgett wanted Section 8 exemptions to be part of Section 1. She asked about the penalties. Sellars discussed the penalties. Commissioner Padgett asked if the Sheriff should have more discretion about issuing a warning or penalty. She wanted to change the “shall” to “may” and add “or a written warning at the Sheriff's discretion”. Commissioner Padgett wanted to strike 2 and add “any subsequent violations by the same individual or same property shall be subject to a penalty of ‘x’ at the Sheriff's discretion”. A discussion followed.

There was more discussion about changes.

Dudley Case asked if this was just for open burning on agricultural land. Commissioner Albritton reiterated that it was geared to residential communities who were burning slash on their property and exempted agriculture.

Commissioner Albritton reviewed the procedure. The Second Reading was scheduled for February 7, 2012 at 11 a.m. where public comment would be taken. The Ordinance would be published in the January 26, 2012 issue of the *Ouray County Plaindealer*. It would become effective on March 10, 2012 if approved at the Second Reading.

M/S/P—Motion was made by Commissioner Fedel and seconded by Commissioner Padgett to schedule the Second Reading on February 7, 2012 at 11 a.m. There was no discussion. Motion passed unanimously.

2:26 Executive Session:

M/S/P—Motion was made by Commissioner Fedel and seconded by Commissioner Padgett to enter into an executive session pursuant to C.R.S. § 24-6-402(4)(b) for a conference with the County Attorney for the purpose of receiving legal advice on a specific matter regarding Gunn tire issue.

A roll call vote was taken on the motion with the following results.


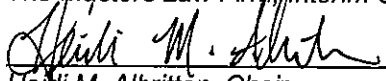
Commissioner Albritton voted in the affirmative

Commissioner Fedel voted in the affirmative

Commissioner Padgett voted in the affirmative

There was no discussion. Motion passed unanimously.

As County Attorney, it is my opinion that the discussion of the matter announced in the motion to go into executive session constitutes a privileged attorney-client communication.


The Masters Law Firm, Interim County Attorneys

Heidi M. Albritton, Chair

Those present for the executive session were Interim County Attorney Kathryn Sellars; Commissioner Albritton; Commissioner Fedel; Commissioner Padgett; and Connie Hunt, County Administrator.

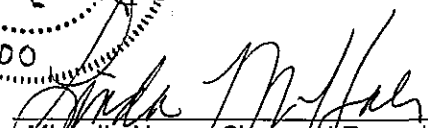
2:28 The Commissioners convened into executive session:

2:36 The Commissioners reconvened into regular session:

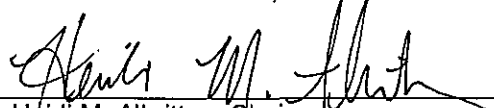
Commissioner Albritton explained that the Commissioners received legal advice relative to the Gunn tire matter. No action was taken.

2:41 The Commissioners adjourned the regular session:




Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO


Heidi M. Albritton, Chair


F. Mike Fedel, Vice-Chair


Lynn M. Padgett, Commissioner