

Commissioner Fedel suggested that a PUD statutorily was a more negotiable process anyway. As far as a precedent, there was no precedent in Land Use, especially on a PUD. Each was a unique case-by-case situation.

Sellars explained that her point was that the state statute required the counties to put their subdivision regulations into place. Ouray County did that in 1971 and it had been modified since then. The current version of Section 6 changed the County's ability to grant extensions to a PUD, they only get one. Somewhere along the line, lingering subdivisions was recognized as an issue and the Board at that time decided to implement that policy.

Commissioner Albritton wanted to see the County grant the extension as it stood for a simple five years.

Commissioner Fedel agreed. There were plans in place for very well laid out and thought out subdivisions. He did not see the risk here. He wanted to grant a five-year extension as it stood.

Sellars could draft a resolution with all of the reasons expressed today.

Commissioner Albritton agreed and asked for the Commissioners to then make comments once they saw the draft resolution.

Commissioner Padgett pontificated that "sometimes what you want to do and what you have to do are two different things." Making sure that the Commissioners did what the Land Use Code said and stayed within their state authority, was working for the County because they were protecting county assets. When the citizens said, "How could you let this happen on your watch?" they did not say, "Oh, well, I tossed that out with the bath water."

Commissioner Albritton interjected that she was not tossing anything out with the bath water.

Commissioner Padgett asked to continue. She did not think that anything here was life or death but she wanted to see the draft resolution before finalizing the action to ensure that, first of all, the Commissioners were taking an authority that they were not expressly granted, and she was okay with that but would have preferred that the developer would have come forward with a request for an amendment to make it cleaner. She suggested that the Commissioners could leave the proceeding open to give the developer a chance to do that. Secondly, regardless of whether this was a built out subdivision or not she did recall some phased developments from when she was on the Planning Commission and that there was a lot of thought given to making recommendations with extensions. This was not the only phased development that had asked for an extension in Ouray County. If Commissioner Albritton was using that for her rationale, Commissioner Padgett cautioned her to be careful. This was not a unique situation. The Commissioners needed to really understand if they were setting a precedent that would then cause the county's citizens to think that there were some guarantees in the Land Use Code that the Commissioners had nixed with this action.

Commissioner Albritton totally disagreed with that assessment. Commissioner Fedel disagreed, also.

Commissioner Albritton directed Sellars to draft a resolution and give the Commissioners a chance to comment on it. It would be placed on the next agenda.

Commissioner Padgett clarified for those in attendance that it was unanimous that the vested property rights should remain vested. The discussion was regarding the unintentional consequences of taking the action in one form or another. She felt confident that the Commissioners needed to ensure that they had their eyes wide open when they took authority and how they used it.

John Gurule was okay with the meeting being continued to April 10, 2012 at 1:30 p.m.

**M/S/P**—Motion was made by Commissioner Fedel and seconded by Commissioner Padgett to continue the process until April 10, 2012 at 1:30 p.m. There was no discussion. Motion passed unanimously.

## **F. 12:02 Land Use Items:**

### **1. Discussion of a proposed Resolution concerning Temporary Sign Regulations:**

Commissioner Padgett asked to table the discussion on temporary sign regulations. She felt that the draft resolution was too broad. She wanted to have the opportunity to work with Staff or present her thoughts to detail what she was hoping to get to with these regulations.

Commissioners Albritton and Fedel agreed to table the discussion.

**M/S/P**—Motion was made by Commissioner Padgett and seconded by Commissioner Fedel to table the item until revisions could be made and Staff meetings could happen. There was no discussion. Motion passed unanimously.

**12:05 The Commissioners recessed for lunch and reconvened at 1:33:**

## **H. 1:33 Continuation of Public Hearing from January 24, 2012:**

**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.

**Laurence (Butch) Gunn and Keith and Peggy Maynes were present along with their attorney Amy Ondos. Mark Castrodale, County Planner, was present. Interim County Attorney Kathryn Sellars with the Masters Law Firm was present.**

Commissioner Albritton reopened the public hearing. She entered into the record as *Respondent Exhibit H-1* a letter dated March 12, 2012 from Eric J. Voogt with Inman and Flynn Attorneys at Law to Jeff Emmons with the Colorado Department of Public Health and Environment (CDPHE).

Sellars recapped that at the last public hearing on January 24, 2012 the Commissioners granted a continuance to this date and asked for a status report from Gunn. The County received the report on February 21, 2012. *[This report was not presented at the meeting or entered into the record during the meeting. It will be entered into the record at the continuation on June 12, 2012.]* The County also received an informal request regarding the grant application that was discussed with CDPHE. At this time it was not a viable option. Sellars referred to the letter dated March 12, 2012 from Voogt, who represented Gunn along with Ondos, that was in response to CDPHE requests of September 16, 2011 and November 1, 2011. It was a partial report regarding the removal of tires and the requested actions in the letters from CDPHE and included three attachments: tire incidence maps, a uniform waste tire manifest, and Waste Tire Exchange Fee Return documentation. The letter was received late last night and the exhibits were received this morning.

Amy Ondos, Attorney for Gunn, explained that their position was still that the tires should remain where they are. The CDPHE has a grant program for cases such as these where they offer grant money for projects that need to be cleaned up around the state. However, she and her clients have hit a stone wall not only from Ouray County, who decided not to pursue the application, but also from CDPHE, who said that even if her clients filed an application they would refuse to look at it. Part of the attachments referred to by Sellars included maps that listed property ownership and tires that were removed from that property along with contact information regarding each property owner. There would also be information about the man-hours that were expended by Gunn and Maynes removing the tires. Some of the additional information requested by the State was documentation from Maynes Tire that they had paid the fee required by statute regarding each new tire they sold. The records indicate that all of the fees had been paid. One other attachment was documentation by a tire hauler out of Olathe that the tires had been removed, provided and disposed of in more of a legal manner. Some of the tires remained at Maynes Tire waiting to be disposed of. They were waiting to hear from the Colorado Department of Parks and Wildlife to remove additional tires from the State property in April or May. They contacted some engineering firms to look at the property and had a preliminary report from AgriTech Consulting indicating that in their opinion the tires should remain where they are but the closing plans should include revegetation of the area to ensure that there would be no erosion. It had always been her client's position at this point that the tires should remain where they are and they now had the engineering report confirming that. She and her clients would submit the report from the engineer to the State but they had just received the report this morning. The engineer had only been able to come out on March 7. Her clients would have to deal with the State to determine if they had to remove the tires. She did not expect the State who wanted the tires removed to change its position. Financially, it would be impossible for Gunn and Maynes to do that and the State was not willing to consider an application for their grant program that was specifically designed for cases such as this. Ironically, the grant was sponsored by the tire fees collected by all tire companies across the state.

Commissioner Padgett asked what the weather was like the day that the engineer visited the site. Gunn replied that it had been snowing earlier that morning but the engineer could see the ground there. The site was located at 7,000 feet. Ondos was not present on March 7 for the site visit but added that the engineer's report indicated that he was able to see the ground and make that determination. He also took pictures of the site that had been emailed to Sellars.

Sellars indicated that she had not received the pictures.

Ondos said that she would make sure that Sellars got them. In the pictures, dirt could be seen through the snow.

Commissioner Albritton clarified that the County had not received the engineering report. She asked Sellars to describe the grant program and why the County felt uncomfortable signing off on it and why CDPHE was reluctant to entertain the grant application.

Sellars related that she had a teleconference with CDPHE about the grant because she wanted to understand the obligation on the County and the timing of the grant. It was CDPHE's position that it was not appropriate right now. It was not CDPHE's position that it would never be appropriate. Submittal of the grant required that the closure plan and contractor were in place. The County felt that the client was nowhere near having that in place. The County had to sign the grant but did not know financially what the obligations would be on the County with the grant. According to CDPHE, the grant was a measure of last resort after going through the steps of the closure plan and enforcement. CDPHE was very concerned about the financial capabilities of the parties and wanted information on that. One of the biggest issues was that the grant ran on the State fiscal year that ended on June 30. The applicant had to go through the grant process, get the grant money and spend all of the funds prior to that date. Neither Sellars nor the CDPHE felt that was a possibility, and CDPHE was adamant that right now it was not an option without going through their process first. It would be next year before the work could be done. The County did not feel that it was a wise use of resources.

Commissioner Albritton suggested that had Ondos and her clients submitted the engineering report in a timely manner as requested the grant may have been an option.

Sellars noted that the unknown fiscal impact on the County was a big consideration.

Commissioner Albritton asked if the Commissioners needed to have a discussion about the ownership status.

Sellars explained that the assertion had been made that Bertha Gunn, Mr. Gunn's mother, was the owner of the property. It was transferred from a trust to Mr. Gunn. Mrs. Gunn was a trustee of the trust and reserved a life estate for herself. She had a possessory interest in the property for her lifetime; however, she cannot convey the property as Mr. Gunn can. She could convey her life estate. This was a bundle of sticks of rights. She held some of them and Mr. Gunn held some of them. To say that she was the owner of the property was not accurate.

Ondos had never disputed the fact that Bertha Gunn had a life estate in the property and Butch Gunn was the owner of the property.

Sellars noted that in Voogt's February 21, 2012 letter he clearly stated that Bertha Gunn owned the property.

Commissioner Albritton asked about the notion of the ag exemption.

Sellars did not want to deal with that issue today unless Ondos or Gunn wanted to discuss it.

Ondos replied that it was still her and Gunn's position that the property was agricultural and fit with the exemption of the Ordinance. She and her client would ultimately like for the Commissioners to dismiss the Notice and Order for the removal of rubbish. It was not beneficial to Gunn to have it held over his head. He understood that Ouray County would still be interested in the end result of what happened and he would keep the County involved.

Commissioner Padgett referred to the Waste Tire Exchange Fee Return forms submitted by the Respondents (*Respondent Exhibit H-1*) and asked what they were supposed to show the Commissioners.

Ondos replied that the forms were in response to the State's request in its September 16, 2011 letter asking for proof from Maynes Tire that they had paid that fee for every tire that they sold in their shop.

Peggy Maynes, the record keeper for Maynes Tire, explained that the fee used to be for the disposal of old tires and was \$1.00 at that time. The State had since raised it to \$1.50 and put it on new tires. Those fees had been paid from the time they were first notified by the State. That was contrary to what had happened since. Maynes Tire had never received any notice on the hauling of tires or anything regarding the solid waste business. The solid waste people asked her to go back five years through her records to prove that she had paid that on every tire and she told them to go to hell. She had paid that on time every single month to the Division of Revenue. If they wanted those records they could go to the Division. They were part of the State.

Ondos clarified that it was the CDPHE who had requested the records.

Commissioner Padgett asked Peggy Maynes how many cars her shop serviced in a month.

Peggy Maynes replied that it would be a guess. At Commissioner Padgett's insistence Peggy Maynes replied that some months, in January and December, it was very low. October and November were the high months. The rest of the year was hit and miss. A slow month, this past month, Maynes sold 78 tires.

Ondos clarified that most vehicles had four tires, some had six, but people also just purchased individual tires or a pair. Maynes kept track of how many tires they sold not necessarily how many vehicles they serviced.

Peggy Maynes asked why the tire dealers had never been notified of the regulations that were passed. That was totally asinine. If the State expected the tire dealers to comply with the regulations then the State should have at least notified the tire dealers. Peggy Maynes clarified that she was talking about the hauling of the tires that the State said Maynes was in error of hauling more than nine tires at one time and other regulations that they could not store more than so many tires on their property at one time. She asked again why the tire dealers in Colorado had not been notified of these things. Most tire people would be happy to comply but they had to be notified of it.

Commissioner Albritton explained that that was a piece of the puzzle that was totally outside of the County's scope of the Notice and Order. She appreciated Peggy Maynes's frustration but the Commissioners could not speak for the State. The Commissioners' concern was the method that the tires were disposed of in Ouray County and on the property, specifically. Members of the public were curious about this collection of fees.

Commissioner Padgett pointed out that the documentation provided showed two years, 2007 to 2009. It was missing 2009 to present. In that time, Maynes was showing only 532 tires, a little more than 250 a year, or an average of 11 cars a month, 44 tires a month for that entire period. That did not jive with what the Commissioners had heard from the public who lived on CR 4 that said that there were trucks going up CR 4 multiple times a month.

Sellars interjected that she did have records from July 20, 2009 through October 20, 2011 that did not get printed and that she would forward those records to the Commissioners.

Peggy Maynes added that not all tires from Maynes Tire went to the Gunn property. People from Hinsdale County came and got tires for erosion control.

Ondos noted that there had been a change in the fee collection. It was, initially, \$1.00 for waste tires and then the State changed the fee to \$1.50 and charged that for all new tires. She clarified that just because Maynes was selling "x" number of tires per month it did not mean that they were disposing of those tires.

Commissioner Padgett questioned some of the numbers on the forms. It seemed odd that only 4 tires' fees were collected in an entire month.

Peggy Maynes clarified that there was not a fee on truck or agricultural tires because they could be retreaded.

Ondos replied to a question by Commissioner Albritton about the engineer's assessment and a closure plan. She noted that he had a recommendation for a plan that included seeding recommendations and the use of straw matting to help with the seeding but that it was not an actual closure plan.

Commissioner Albritton returned to the process. A closure plan needed to be submitted to CDPHE. The Commissioners had been waiting for that plan, too. She reminded the Respondents that the County had tried to go in tandem with the other regulatory authorities and not request separate studies or efforts in addition to what was already being requested. She suggested that until there was a closure plan submitted to the State that the Commissioners could see they were still in somewhat of a limbo.

Commissioner Padgett stated that the Commissioners could not act on the request for dismissal until they saw the result of the State's investigation and the closure plan.

Sellars asked the owner if he would be willing to report to the Commissioners and give the County the closure plan.

Commissioner Albritton agreed with Commissioner Padgett that the Commissioners did not have enough information to dismiss. At this point the Commissioners felt that the Ordinance did apply and they had not seen any evidence to the contrary.

Commissioner Padgett recalled that there was information previously stated on the record that there was no ag operation in the place where the tires were located.

In discussing a continuation, Commissioner Fedel pointed out that the only important date was July 26, 2012. The statute of limitations on a violation of Land Use Code, if there really was one, was one year. The Respondents were making progress but they definitely needed a closure plan and it was in everyone's best interest to get it as soon as possible.

Ondos reported that the engineer had indicated that in order to do soil samples he would not be able to get to the property until May or June. He was out of the Front Range and part of that timing would be his schedule to get here.

Commissioner Albritton cautioned that if the Commissioners did not have the closure plan and any other information to convince them otherwise, they had no other option but to proceed with enforcement of the Notice and Order. By putting this off, the Respondents were putting the Commissioners in the position of following the letter of the law without any discretion. She added that they were taking away their own ability to have flexibility in the matter.

Ondos asked the Commissioners to clarify what section of the Land Use Code Gunn was in violation of.

Sellars replied that it was not a use by right to have a solid waste disposal site in the zone that the property was on. It was in Section 3 of the Land Use Code.

Commissioner Fedel reiterated that it was definitely in the Respondents' best interest to get the closure plan as soon as possible. The Commissioners would be forced into a decision on or about July 26, 2012. He proposed a continuance until mid-June.

Ondos advised that the closure plan would be to leave the tires where they were and do reseeded. That was what the engineering company recommended.

Peggy Maynes offered that the engineer had at one time worked for the EPA (Environmental Protection Agency) and was the engineer who did DIA (Denver International Airport). He was not just someone off the street. He was very qualified. In her opinion, his firm was the best in the state.

Ondos added that she would send a copy of the engineer's report to Sellars along with the pictures that he took.

Matthew Jurjonas with the Uncompahgre Watershed Partnership replied to a question from Commissioner Padgett about how many tires he and his group of volunteers pulled off of the state property saying that they pulled 57 tires off.

Commissioner Padgett noted that according to the exhibit provided today 130 tires were pulled off of all of the other properties combined and she considered that low.

Ondos replied that Dave Hale at the Division of Parks and Wildlife (DPW) estimated that there were between 70 and 80 tires on state property. Once the weather allowed access to the area, Hale would notify Gunn and Maynes who would then retrieve those tires. She noted that Hale had indicated in an email that she forwarded to Sellars and that was mentioned in the letter from Voogt that it was basically the DPW's refusal to let Gunn and Maynes onto their property to remove the tires at this point. That portion of the property bordered Gunn's property and Hale had indicated to Ondos that he may have another volunteer day to move the tires to an area that Gunn could access without having to invade the State property.

**M/S/P—Motion was made by Commissioner Fedel and seconded by Commissioner Padgett to continue the hearing until June 12, 2012 at 1:30 p.m. There was no discussion. Motion passed unanimously.**

Peggy Maynes referred to an article in the *Ouray County Plaindealer* with a picture saying that a dozer had been taken into the river indicating that Maynes was connected to it. She asked if they had the Commissioners or the Division of Wildlife to thank for that little bit of information. The Commissioners replied that they knew nothing about the article.

Ondos suggested thanking the *Ouray County Plaindealer* for doing an inaccurate article and not getting both sides.

Peggy Maynes added that her husband, so far as she knew and she had been married to him for 55 years, had never been on a dozer and she was sure that he would not be out in the middle of the river on one. Whoever did that bit of information along with a whole bunch more information was way off base and they could prove it.

Jessi Marlatt, reporter for the *Ouray County Plaindealer*, replied that she had called Maynes many times and had been hung up on and sworn at up and down the wall.

Commissioner Albritton continued the public hearing.

*\*Numbered exhibits are maintained separately in the County Administrator's office.*

**2:15 The Commissioners recessed and reconvened at 2:18:**

**I. 2:18 Christopher Peltz, Mountain Studies Institute:**

**1. Explanation of Support Request for April 2012 San Juan Mountains Mining Conference:**

Peltz distributed an agenda for and session descriptions of the San Juan Hardrock Mining and Water Quality Forum. It was determined that, given a lot of the ongoing issues in the upper Animas and in the region at large, another conference would be timely and useful. Because the full information was hard to get and complicated, he advised the session chairs that the audience would be made up of technical people, the mining community, and the general public, and he guided them to make sure that the information was approachable and clear to everyone. The conference would end with discussions of how resource extraction and recreation could coexist.