

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING MINUTES
March 05, 2013**

The March 05, 2013 meeting was held in the Commissioners' boardroom in the Courthouse located at 200 E. Virginia, Gunnison, Colorado. Present were:

Paula Swenson, Chairperson
Phil Chamberland, Vice-Chairperson
Jonathan Houck, Commissioner
Others Present as Listed in Text

Matthew Birnie, County Manager
Bobbie Lucero, Clerk to the Board

CALL TO ORDER: Chairperson Swenson called the Gunnison County Board of County Commissioners meeting to order at 9:14 am.

AGENDA REVIEW: There were no changes to the agenda.

CONSENT AGENDA: **Moved** by Commissioner Chamberland, seconded by Commissioner Houck to approve the Consent Agenda, as presented. Motion carried unanimously.

1. Acknowledgment of County Manager Signature; Gunnison County Department of Health and Human Services, FY 2013-14, Colorado Children's Trust Fund; Nurturing Parenting Program; 7/1/13 thru 6/30/14; \$25,000
2. Acknowledgment of County Manager Authorization to Submit Grant Application; Colorado Department of Public Health and Environment, Prevention Services Division, Budget with Justification Form; Family Planning Program; 7/1/13 thru 6/29/14; \$79,670
3. Acknowledgment of County Manager Authorization to Submit Grant Application; Colorado Department of Public Health and Environment; Immunization Program; 7/1/13 thru 6/30/15; \$50,010
4. Acknowledgment of County Manager Signature; Prothman; Professional Executive Recruitment for a Community Development Director; Scope of Services; \$15,000
5. Professional Services Agreement; Heather Peterson; Services to the Office of Juvenile Services Regarding Assessment, Service Planning, Case Management and Clinical Services to Promote Health and Wellness to Individuals and Families Referred from Gunnison County Family Advocacy and Support Team through the Office of Juvenile Services; 3/5/13 thru 12/31/13; up to \$11,000
6. Acknowledgment of County Manager Signature; Prothman; Professional Executive Recruitment for an Airport Manager; Scope of Services; \$15,000
7. Acknowledgment of County Manager Signature; Colorado Department of Local Affairs; 2012-2015 Community Services Block Grant (CSBG) Application, Gunnison and Hinsdale Counties, Amended Budget for 3/1/13 thru 2/28/14; \$12,399
8. Second Amended Intergovernmental Agreement Conservation Trust Funds and Funding Request Form for December 2012; Gunnison County Metropolitan Recreation District; \$16,008.88
9. Acknowledgment of County Manager Signature; US Department of Transportation, Federal Aviation Administration, Airport Improvement Program Sponsor Certification, Real Property Acquisition; AIP No. 3-08-0030-44/45, Rehabilitation of a Portion of the Commercial Apron at Gunnison-Crested Butte Regional Airport
10. Acknowledgment of County Manager Signature; US Department of Transportation, Federal Aviation Administration, Airport Improvement Program Sponsor Certification, Construction Project Final Acceptance; AIP No. 3-08-0030-44/45, Rehabilitation of a Portion of the Commercial Apron at Gunnison-Crested Butte Regional Airport
11. Agreement; Horizon Lawn and Tree Care d/b/a Horizon Vegetation Management; Professional Services Regarding Application of Herbicide to Control Noxious Weeds Mandated for Control within the Gunnison River Watershed; 3/5/13 thru 10/30/13; \$16,000
12. Memorandum of Agreement; Gunnison Valley Animal Welfare League; Gunnison County Strategic Plan, Promote Healthy Communities Strategy; 1/1/13 thru 12/31/13; \$4,500
13. Gunnison County Department of Health and Human Services / University Physicians, Inc. Professional Services Agreement; Provide Professional Services for Child Welfare
14. Consulting Agreement; New Horizons Computer Learning Center of Denver, Inc.; Provide On-Site Training to County Staff for Microsoft Office Products and Windows 7 Operating System; up to \$6,965

MINUTES APPROVAL: **Moved** by Commissioner Chamberland and seconded by Chairperson Swenson to approve the minutes of 12/4/2012, 12/18/2012, and 12/21/2012. Commissioner Houck abstained because he was not a commissioner during the time of these meetings. Motion carried. **Moved** by Commissioner Houck and seconded by Commissioner Chamberland to approve the minutes of 2/5/2013. Motion carried unanimously. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to approve the minutes of 2/19/2013. Chairperson Swenson abstained because she was not present for this meeting. Motion carried.

SCHEDULING: The Upcoming Meetings Schedule was discussed and updated.

COUNTY MANAGER'S REPORT: County Manager Birnie was present for discussion.

1. Roth Sheppard Architects, LLP Meeting. County Manager Birnie informed the Board that he will be having a meeting with the Courthouse Renovation Project architects, Roth Sheppard Architects, LLP, to review the Courthouse Needs Assessment. He informed that there will be additional costs for the expanded scope. The cost estimator indicates the need for an additional \$800 for engineering.
2. Prothman Company Agreements. County Manager Birnie informed the Board that there were two agreements executed with Prothman Company for advertising the open positions for an Airport Manager and Community Development Director. The positions will be posted in the near future.
3. JViation Briefing. County Manager Birnie informed the Board that he and Assistant County Manager Marlene Crosby will be having a full briefing with JViation in early April.
4. MFR Performance Reports. County Manager Birnie informed the Board that he has been working on MFR Performance Reports for 2012. Molly Mugglestone is compiling the information and the reports will be finished the end of April.
5. Online Citizen Input Tool. County Manager Birnie informed the Board that the citizen input tool should go live in the next 10 days or less. They will advertise for citizen input on the Sage-grouse Proposed Listing, the Gunnison/Crested Butte Regional Airport and the Courthouse Renovation Project.
6. New Employee Orientation Process. County Manager Birnie informed the Board that he is meeting with each new employee to become familiar with one another. During these orientations, Birnie will discuss MFR.

ASSISTANT COUNTY MANAGER'S REPORTS AND PROJECT UPDATES: Assistant County Manager Marlene Crosby, Forman of Special Projects Jim Kint and President of the Alpine Meadows HOA Jim Martin were present for the discussion.

1. Request for Chip Seal on County Road #71; Assistant County Manager Crosby informed the Board that Prime Meadows HOA has been assisting Public Works for a few years to chip seal around Nicholson Lake. She explained that the County went around the lake with the first chip seal to minimize the sediment, and now the HOA has offered to contribute the additional materials. The Board reviewed a map provided at the meeting by Forman Kint. Assistant County Manager Crosby explained that the Public Works crew is using oil without a delay, which has reduced labor and equipment costs. The Board reviewed the breakdown of costs. This project will take place around the second week of August. Mr. Martin informed the Board that they are excited for the road and they appreciate what the County has done. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to approve an agreement with Alpine Meadows HOA for chip sealing County Road #71. Motion carried unanimously.
2. Request for Gunnison Sage-grouse Mitigation Funds; Assistant County Manager Crosby explained that this request was funded last year, and that the project will be mapping noxious weeds in sage-grouse habitat. She informed that National Resource Conservation Service is providing 50% of the salary. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to approve the request to use sage-grouse mitigation funds for the Gunnison Conservation District's mapping of noxious weeds, in the Ohio Creek Valley on private properties, in the amount of \$5,700. Motion carried unanimously. Assistant County Manager Crosby informed the Board that County Attorney David Baumgarten is aware that this will be occurring.
3. Grant of Temporary Easement; David L. Frew; County Road 43 Bridge Project; Assistant County Manager Crosby informed the Board that the bridge on County Road 43 was supposed to be completed, but it was given a 30-day extension. She explained that the easements were only negotiated until 1/24/2013. Due to the cold weather, the project was not completed. She explained that she needs to renegotiate easements with the homeowners, and the homeowners want to be paid for the easements. She informed the Board that the County will pay for easements and the Contractor will trade work for compensation for these easements. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to approve the temporary easement for David Frew in the amount of \$2,500 and approval of County Manager's signature once returned to Assistant County Manager Crosby. Motion passed unanimously.
4. Grant of Temporary Easement; Antonio J. Maldarella and Marvella E. Phelps; County Road 43 Bridge Project; Assistant County Manager Crosby informed the Board that she will submit the easement to the homeowner today. On Thursday, the pre-certification process will begin and bidding will go out on 3/13/2013. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to approve the temporary easement with Antonio Maldarella and Marvella Phelps, for the County Road 43 Bridge Project, in the amount of \$2,500 and approve the Board Chair signature. Motion passed unanimously.
5. Taylor River Road Project Agreement and Proposed Schedule with Federal Highway Administration;
 - a. Right of Way and Utility Certification for the Taylor River Road Project; Assistant County Manager Crosby provided a right-of-way certification and utility certification for the Taylor River Road Project. She explained these documents have to be signed to assure that they have acquired the right of way, and the utilities have been scoped out and identified. **Moved** by Commissioner Houck and seconded by Chamberland to approve right-of-way

- certification for the Taylor River Road Project. Motion carried unanimously. **Moved** by Commissioner Houck and seconded by Chamberland to approve utility certification for the Taylor River Road Project. Motion carried unanimously.
- b. Reimbursement Agreement: County Finance Director Linda Nienhueser was present for discussion. Assistant County Manager Crosby explained to the Board that the bridge is fine, and the road was widened so the bridge looks smaller. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to approve Federal Highway Administration Federal Lands Highway Grant Agreement #DTFH68-13-E-00013 that was presented today. The total amount for Gunnison County is to not exceed \$1,861,174. Motion carried unanimously.
6. Potential Road Closure: Assistant County Manager Crosby informed the Board about a possible road closure. Forman Kint explained that the project runs outside of Almont to Harmels. The first closure will be from the Almont Post Office to the lower end of the Dunbar properties. Work will be expedited because the contractors will not have to manage traffic and it will be more productive. There will be four blasting areas in this project. Assistant County Manager Crosby reminded the Board about the reason for blasting, which is because the public did not want retaining walls and guard rails in the river. Forman Kint informed the Board there will be one-lane emergency access after hours. He informed the Board that the second road closure will be at the upper end of Dunbar Tracks to the Jack's Cabin cutoff intersection. He explained that there cannot be two road closures at the same time. He informed the Board that they have a written agreement with Mark Schumacher, regarding blasting times. The road will be open during the holiday weekends. Assistant County Manager Crosby informed the Board that she spoke with the Federal Highway Administration to ensure the road is compliant. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to authorize road closures on Taylor River Road during construction days of the grant for 2013. Motion carried unanimously.
7. Bicycle Tour Colorado: Assistant County Manager Crosby informed the Board that Bicycle Tour Colorado will be going from Crested Butte over Cottonwood Pass on 6/28/2013.

CORRESPONDENCE; REQUEST FOR LETTER OF SUPPORT; GREAT OUTDOORS COLORADO GRANT APPLICATION; COLORADO CATTLEMEN'S AGRICULTURAL LAND TRUST; PURCHASE OF A CONSERVATION EASEMENT ON APPROXIMATELY 335 ACRES OF THE VOLK RANCH;

The Board reviewed the sample letter provided in the packet materials. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to approve and sign the sample letter. Motion carried unanimously.

BREAK: The meeting recessed from 10:14 until 10:19 am.

RESERVE METROPOLITAN DISTRICT NO. 1, ET AL VS. RESERVE METROPOLITAN DISTRICT NO. 2; County Attorney David Baumgarten was present for the discussion.

County Attorney Baumgarten reminded the Board that in the end of December 2012 the Board certified a mill levy for operating purposes. There was an internal dispute with Reserve Metropolitan District 2 related to whether or not it was an appropriate mill levy. County Attorney Baumgarten's advice to the Board in 2012 was to accept the certification because the Board only has a ministerial duty to certify and collect the mill levy. Since then, a lawsuit has been filed where the Board and the Gunnison County Treasurer are named in the lawsuit. County Attorney Baumgarten informed the Board he has spoken with the lawyers and they have arrived at a stipulation. The lawyers acknowledged that the Board and Treasurer have ministerial roles, and they agreed that the money collected for the mill levy will be held until the lawsuit is settled. Once the lawsuit is settled, the money will be dispersed accordingly. The Board informed County Attorney Baumgarten that this is acceptable.

BREAK: The meeting recessed from 10:21 until 10:52 am.

U.S. FISH AND WILDLIFE SERVICE PROPOSED LISTING OF THE GUNNISON SAGE-GROUSE UNDER THE ENDANGERED SPECIES ACT; County Attorney David Baumgarten and Wildlife Conservation Coordinator Jim Cochran were present for the discussion.

County Attorney Baumgarten informed the Board that he would like to discuss the extension of time requested from the US Fish and Wildlife Service, the potential release of the draft comments, and a report from Wildlife Conservation Coordinator Cochran regarding other parties to ally with. County Attorney Baumgarten would like to discuss the draft comments and other parties to ally with in executive session.

County Attorney Baumgarten informed the Board that his office has requested a deadline extension from the US Fish and Wildlife Service. County Attorney Baumgarten was notified this morning, by Senator Bennet's office, that there will be an extension granted. County Attorney Baumgarten will inform the Board about the length of the deadline extension, after he receives a response from the US Fish and Wildlife Service.

County Attorney Baumgarten requested that the Board, County Manager Birnie, Wildlife Conservation Coordinator Cochran go into executive session with him to discuss potential release of drafts, report potential allies, and discuss legal issues in the draft itself. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to go into executive session. Motion carried unanimously.

The Board went into executive session at 10:52 am. *Executive sessions of the Board of County Commissioners are conducted as per C.R.S. 24-6-402(4). This specific session was conducted as per C.R.S. 24-6-402(4)(b) and C.R.S. 24-6-402(4)(e).*

Attorney Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402(4), I attest that I am the Gunnison County Attorney, that I represent the Gunnison County Board of County Commissioners, that I attended all of the above referenced executive session, that all of the executive session was confined to the topic authorized for discussion pursuant to C.R.S. 24-6-402(4) and that, because in my opinion all of the discussion during the executive session constituted a privileged attorney-client communication, no record of the executive session was required to be kept and no such record was kept.

Date: _____

David Baumgarten
Gunnison County Attorney

Chairperson Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402(4), I attest that I am the Chairperson of the Gunnison County Board of Commissioners, that I attended all of the above referenced executive session, and that all of that executive session was confined to the topic authorized for discussion pursuant to C.R.S. 24-6-402(4).

Date: _____

Paula Swenson, Chairperson
Gunnison County Board of Commissioners

The Board came out of executive session at 11:27 am. Chairperson Swenson confirmed that the discussion remained on-topic, that all parties stated to be in attendance were, in fact, in attendance and that no decisions were made.

REQUEST FOR FUNDING; WESTERN SLOPE RURAL PHILANTHROPY DAYS STEERING COMMITTEE; Steering Committee members Pam Montgomery and Sue Uerling were present for the discussion.

Mrs. Montgomery explained that the Western Slope Rural Philanthropy Days will take place from 6/17/13 -6/19/13 in Ouray, Colorado, and this event occurs every four years. She expressed her hope that the Board would donate \$1,000 because it is an opportunity for the County to be represented at this event. The Board discussed what activities will be taking place at this event. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to approve \$1,000 from the Board's discretionary fund for the 2013 Western Rural Philanthropy Days. Motion carried unanimously.

UNSCHEDULED CITIZENS:

1. Ramon Reed; Travel Management Plan Meeting in Pitkin. Mr. Reed expressed that people at the Travel Management Plan meeting in Pitkin are not necessarily representatives of the community. Mr. Reed informed the Board that he was told he was not welcome to attend that meeting. He stated that the meeting was not posted in town by the Mayor, and that many citizens are intimidated by the group. He informed the Board that more than one person had asked him to represent a different view point and he suggested they involve more people than just this group, when considering amending the Travel Management Plan. Commissioner Chamberland asked Mr. Reed to send him contact names and he will try to find out what the issues are with this group.

COMMISSIONER ITEMS:

Commissioner Houck:

1. Region 10: Commissioner Houck informed the Board that at the Region 10 meeting on Thursday, February 28, 2013 new members were appointed due to staff changes, and he was elected to the Executive Committee.

Commissioner Chamberland:

1. Young Colorado Meeting: Commissioner Chamberland informed the Board that he attended a Young Colorado meeting that was set up by Senator Bennet's office at Colorado Mesa University in grand Junctions. He opined that he made good contacts for exporting.

Chairperson Swenson:

1. CCI: Chairperson Swenson informed the Board that in the next couple of weeks there will be oil and gas bills being proposed. One of the bills may be regarding counties allowing charging for inspections, and allowing a fee charge that covers cost of local government designees by counties.
2. Economic Development Group: Chairperson Swenson informed the Board that Bill Ronai organized a group to work on a Target Marketing Project, and wanted to see if the group would divert its project to call it the Valley Drivers Project. The group members would consist of Bill Ronai, John Norton, Paul Holden, David McCay & Kurt Giesselman. The members would sit down with local businesses and have a heart to heart on what they need from the community. This group could give input on what the community needs. Chairperson Swenson inquired if the Board would be in favor and support this effort, and sign a letter asking the drivers to participate in this project. This group would be a taskforce for the Board to delve into what we need to be doing. Chairperson Swenson will draft letter.
3. Western Community Council: Chairperson Swenson informed the Board that Brian Barker and Karen Copetas are joining the Western Community Council. This council will work on getting Western State Colorado University and the community working with one another.

BREAK: The meeting recessed from 11:58 until 12:59 am.

PUBLIC HEARING; APPEAL OF PLANNING COMMISSION DECISION; JOHN NICHOLS, LUC2012-23, LOT 4, RIVERLAND INDUSTRIAL PARK, FILING NO. 1; APPELLANT WILLIAM J. LACY, JR., REPRESENTED BY WILDERSON LOCK and HILL, LLC Assistant Community Development Director Neal Starkebaum, Former Planning Commission Chairperson Ramon Reed, John Nichols, Attorney Marcus Lock, and William J. Lacy, Jr. were present for the discussion.

Chairperson Swenson explained that originally they did not have a public hearing in the past, but due to the recording being inaudible, there is a public hearing taking place.

1. Open Public Hearing. Chairperson Swenson opened the Public Hearing at 1:01 pm.
2. Public Notice Confirmation. Assistant Community Development Director Starkebaum informed the Board that he posted all of the public notice documentation in the Gunnison Times and Crested Butte News. He informed that additionally staff posted the property on Highway 135 and Buckley Drive. He also sent certified mail notices to all land owners within 500 feet of the property.
3. Identify Ex Parte Communications. Commissioner Chamberland informed the Board that he had a discussion with Mr. Lacy, at Mr. Lacy's request. Chairperson Swenson informed that she received a phone call from Mr. Lacy, they did not discuss the issue because she informed him they decided to hold the public hearing, at which they would be hearing his testimony.
4. Staff Presentation. Assistant Community Development Director Starkebaum presented the information provided in the packets. Mr. Nichols explained to the Board that lots in the Riverland Industrial Park (Riverland) are not allowed to have outdoor storage, and the batch plant is also being discussed today. Mr. Nichols explained that because of the number of trips per day the state wanted to see the entrance updated/replaced, so the road was widened to accommodate more than 10 trips a day. Mr. Nichols explained to the Board that both parcels reviewed make up Lot 4. Mr. Nichols informed that he spoke with Mt. Crested Butte Town Council Danny D'Aquila. Mr. Nichols informed that Mr. D'Aquila was comfortable with their decision to approve the variance.
5. Applicant Presentation. Mr. Lock gave a presentation to the Board. Mr. Lock explained that this approval is an amendment to the Riverland covenants, which was done illegally because it did not follow the proper process. He explained a full minor impact was not done in this case. One of the owners of lot 4 does not show up on the application, the Planning Commission did not realize that Mr. Nichols has no right to access this entrance.

Mr. Lacy informed the Board that in 2008 he was approached by the Planning Commission, John Rozman, John Nichols & United Companies to close the south entrance. He explained to the Board that the property has a steep grade coming off of their driveway, so he built a lane to ensure that he had room. People were using the accelerate and decelerate lanes as a turning lane and it was a safety hazard. Mr. Lacy was concerned with safety. Mr. Lacy commented that the lot was supposed to be used for a septic system, and instead a batch plant was built there with no approval. Mr. Lacy expressed concern with the visual impacts of the property.

Mr. Lock referenced the Gunnison County Land Use Regulations (LUR) regarding modification, reversal or remand. The Board has the option to modify, reverse or remand the Planning Commission's decision based on finding the following: no creditable evidence to

support the original decision in the record, original action by the Planning Commission is inconsistent with the resolution, or the review body action is inappropriate. Mr. Lock stated that partial exemption is not applicable, and that the covenants state there is no outside storage allowed. Mr. Lock also commented that the land use change requirements also state that in that area no outside storage is allowed. Mr. Lock is requesting that the Board reverse the approval, remand it with the Planning Commission, and modify the Planning Commission approval/decision so that no outside storage is allowed on Lot 4.

Mr. Lock provided partial transcripts from the Planning Commission meetings to review. A Land Use Change Permit for Riverland Industrial Park requires a full minor impact review for any proposed land used in Riverland. Mr. Lock stated that minor impact review is required, and then he reviewed transcripts from the Planning Commission meetings where there was discussion among Planning Commission members that full minor impact is typically required on lots in Riverland. The transcripts referenced that the Planning Commission discussed if they should change this partial exemption, and the transcripts revealed that they concluded the partial exemption was an approved use within the covenants. Mr. Lock opined this is inaccurate because it is not an approved use by the covenants. Mr. Lock explained that treating the application as partially exempt has potential constitutional implications, because it is an improper delegation of a quasi-judicial land use decision by the Planning Commission. Mr. Lock opined that it should have been treated as a full minor impact review, because the impacts would have been reviewed, impacts to the adjacent properties would have been reviewed and it would have been determine that the proposed land use change is compatible with or an enhancement of the land uses in the area. He pointed out that the proposed water supply was not taken into consideration. Mr. Lock provided an additional comment letter from Sue Oats for the Board to review.

Mr. Nichols explained that only vehicles and equipment will be stored at the site. Mr. Lock stated that parking vehicles in the storage area is problematic, and you cannot park on property that is not yours. Mr. Lock passed around pictures that were taken of the property. The Board reviewed the pictures.

6. Board Questions. The Board had no questions about the applicant's presentation.
7. Public Comments. John Rozman commented that the road put in last summer was not put in to serve that lot, the road was to meet obligations by United Companies (United) and Riverland to get everything completed. He stated there were no plans to use the road for anyone but United. He informed the Board that he fenced it off and this is a private road to only be used for United due to the maintenance and use. Mr. Rozman stated that he never intended the land he gave Mr. Nichols to be accessed from this road. Mr. Rozman informed the Board that he has a recorded agreement with United regarding the use allowed for this road.
8. Acknowledge Correspondence Received. Chairperson Swenson acknowledged that she received additional correspondence from Ramon Reed, who was the Planning Commission chair at the time of this decision and outline the process and how the Planning Commission derived at their decision.
9. Applicant Response. Mr. Nichols explained to the Board that in 2008 the building was approved, but he did not build the building because the regulations changed, not due to water issues. Mr. Nichols stated that he gave up land for the road. He informed that he paid to have the high tension lines moved. Mr. Nichols explained that a batch plant has been an approved use in Riverland since 1982. He commented that the pictures passed around should be taken from Highway 135, so that they show the screening of the trees and the visual impacts. Mr. Lacy informed that the pictures were taken from Highway 135. Mr. Nichols stated that his neighbor is United and is much bigger than him, and will be installing a batch plant as well. Mr. Nichols opined that if you have a concrete, auto or excavating business on this property then you would be storing items on the location. Mr. Nichols informed that Dave Hines signed the document giving him permission to do this and can be resolved with a letter. Mr. Nichols explained that Mr. Hines may not want to be a part of the process. Mr. Nichols explained that the Crested Butte Fire District is requiring they install a \$100,000 fire system, if he cannot get an approval then he will have to buy Dave Hines out. Mr. Lock stated that Mr. Nichols can access the property from Buckley Drive.

Assistant Community Development Director Starkebaum commented that authorization is not in the Planning Commission's file. He explained that the Planning Commission's assumption was the road access was on Lot 4, and this case was handled as a minor impact review and was handled as defined within the LUR under Exempt Land Use Change. He included that the approvals for the Riverland Industrial Park were from 1982. He explained that they were adopted to protect existing subdivisions that have protective covenants, which Riverland has.

Assistant Community Development Director Neal Starkebaum explained the variance process has been followed. He commented that the photos taken by Mr. Lacy near the old access, which was recently moved to the new south entrance, will be bermed and landscaped which is contiguous with the rest of the berm and landscaping up Highway 135. He confirmed that everything that was required by the Lot Association was taken care of, and the intent of the Planning Commission was to make sure that these conditions were going to be carried over to the Planning Commission's conditions. Mr. Lock stated that the treatment partially exempt is not a legal procedure for the Planning Commission to approve partial exemption.

County Attorney Baumgarten commented that the original covenant document gives an opportunity for variance. He explained that the variance was approved by the Riverland HOA and the County, and the time to object to the existence of this variance is over. County Attorney Baumgarten advised that the partially exempt language in the LUR provides the Board the opportunity to approve as a partial exemption because they did so in the past and it is consistent.

There was discussion that when the Planning Commission deliberated, the new south entrance was discussed yet access from the Buckley Drive was not. Mr. Reed commented that the Buckley Drive access was never brought up to the Planning Commission during their process.

- 10. Close Public Hearing. Chairperson Swenson informed that in addition to all of the historical information, all of the information provided at the public hearing will be in the archived packet materials. The Public Hearing closed at 2:21 pm.

The Board discussed that the Planning Commission did not have the ability to discuss the other point of access through Buckley drive. The Board discussed that there was new evidence provided at the meeting today. **Moved** by Commissioner Chamberland and seconded by Commissioner Houck to modify the decision to include the following:

- 1) That the conditions by the Riverland HOA on 8/14/12 are expressly a part of the decision;
- 2) Until the dispute is resolved, conditional approval is that access to this property is only from Buckley Drive; and
- 3) Have in the file approval from the title owner Altitude Building, LLC to allow John Nichols to proceed with this process.

The Board discussed enforcement and that the recourse is through the property owners and the Board of County Commissioners. Motion carried unanimously.

ADJOURN: Chairperson Swenson adjourned the meeting at 2:29 pm.

Paula Swenson, Chairperson

Phil Chamberland, Vice-Chairperson

Jonathan Houck, Commissioner

Minutes Prepared By:

Bobbie Lucero, Deputy County Clerk

Attest:

Stella Dominguez, County Clerk