

**MEETING MINUTES**  
**GRAND COUNTY BOARD OF COMMISSIONERS**  
**GRAND COUNTY DEPARTMENT OF SOCIAL SERVICES**  
**GRAND COUNTY HOUSING AUTHORITY**

July 5, 2016

Present: Commissioner E. Jane Tollett, Commissioner District 1- Chair  
Commissioner Merrit Linke, Commissioner District 2  
Commissioner Kristen Manguso, Commissioner District 3  
Clerk and Recorder Sara Rosene  
County Attorney Alan Hassler  
Interim County Manager Ed Moyer  
Finance Director Curtis Lange

Those present recited the Pledge of Allegiance.

Minutes

Commissioner Linke moved to approve the Meeting Minutes of Grand County Board of Commissioners, Grand County Department of Social Services, and Grand County Housing Authority of May 3, 2016, with corrections.

The motion passed unanimously.

Commissioner Linke moved to approve the Meeting Minutes of Grand County Board of Commissioners, Grand County Department of Social Services, and Grand County Housing Authority of May 10, 2016, with corrections.

The motion passed unanimously.

Finance Director

Mr. Lange presented the vouchers and wire payments to be paid on July 6, 2016. Mr. Lange stated that the total amount due is \$98,736.94 and that amount includes the purchase of magnesium chloride.

Commissioner Linke moved to approve the vouchers presented on July 5, 2016 for payment of July 6, 2016 for Grand County and vouchers for the Department of Social Services.

The motion passed unanimously.

Commissioner Linke moved to approve the vouchers and the wire payments presented on July 5, 2016 for payment on July 6, 2016 for Grand County.

The motion passed unanimously.

Commissioner Linke moved to open the 2016 Board of Equalization Hearings and continue from time to time as necessary.

The motion passed unanimously.

Commissioner Linke moved to enter into a meeting as the Grand County Housing Authority.

The motion passed unanimously.

Housing Authority Coordinator Sheena Darland presented the Board with a Loan Agreement between State of Colorado Department of Local Affairs for a \$235,000 no-interest loan. The loan is to update the fire suppression system at Cliffview Assisted Living Center. The loan will mature on July 1, 2046.

Commissioner Manguso moved to approve and authorize the Chair to sign the Loan Agreement between State of Colorado, Department of Local Affairs and the Housing Authority of Grand County Colorado for an updated fire suppression system at Cliffview Assisted Living Center in the amount of \$235,000 with a maturity date of July 1, 2046.

The motion passed unanimously.

Commissioner Linke moved to adjourn as the Housing Authority and reconvene as the Grand County Board of Commissioners.

The motion passed unanimously.

### General Public Comments

Merilyn Hunter, president of the Friends of the Grand County Library and a citizen of Hot Sulphur Springs, expressed concerns regarding the closure of the Hot Sulphur Springs Library. The District needs to reduce its 2017 budget. Ms. Hunter noted that the Hot Sulphur Springs Library is a very small part of the budget.

Ms. Hunter stated that Hot Sulphur Springs and Kremmling are underrepresented on the Library District Board. There are five Library Board members from the East end of the County and two members from the West end of the County.

It has been stated that when the Hot Sulphur Springs Library is closed, a community center could be opened and staffed with volunteers from Hot Sulphur Springs. Ms. Hunter stated that the community center is not the idea or suggestion from the members of the community. The idea of a community center is the idea of the Library District Director Stephanie Ralph.

Ms. Hunter stated that the people in Hot Sulphur Springs have a library and want to keep it. She asked the Board of Commissioners write a letter of support to the Library District asking that the Hot Sulphur Springs Library remain open.

Ms. Hunter stated that the Friends of the Granby County Library raises funds and donates to the Library District when funds for specific items is requested. Last year, the Friends donated \$40,000 to the Library District.

Ms. Hunter stated that there are community members in Hot Sulphur Springs that would like to meet with the Library Board and work with the board to find a way to keep the libraries open.

Marla Gall, who lives in Hot Sulphur Springs, stated that she is the treasurer for the Friends of the Library. Ms. Gall stated that she has been reviewing the financial reports from the Library District.

Ms. Gall stated that according to the budget, the total expense for the Hot Sulphur Springs Library is \$83,320. That seems to be an overstatement. The personnel costs are listed at \$62,800. The Hot Sulphur Springs Library is opened 18 hours per week.

Ms. Gall has asked several times if administrative salaries are allocated across the five branches. Ms. Gall has been told repeatedly "no."

The expense of \$83,320 with \$62,800, it seems a more realistic cost of the Hot Sulphur Springs Library is \$40,000.

Ms. Gall stated that based on past actuals, it appears that the most the Library District will save by closing down the Hot Sulphur Springs Library is \$40,000.

Tom Weydert stated that it appears that this is not a staff reduction. They are closing the facility. The people will be working in other branches. Mr. Weydert wondered if the Library District will only be saving the operational costs. Mr. Weydert noted that the rent for the building is \$1. The District pays for the utilities.

Ms. Gall presented the budget performance sheet shows that through May, there is a \$61,600 savings.

Ms. Gall stated that according to the audit, in 2021 the certificates of participation can be called.

Ms. Gall stated that if the Grand Lake Library is not used as a library, it will revert back to the Town of Grand Lake and the Library District is responsible for the debt.

In 2015, the Library District had a savings of \$225,246. They had revenue increase of \$57,000 rather than the budgeted loss of \$167,000.

Commissioner Manguso stated that the Library District Board is fairly new and they are open to a lot of ideas. The Library District will be at the Board meeting next week.

### Departmental Contracts, Comments, Issues

Amy Sidener, Grand County Department of Natural Resources Foreman, presented that BLM assistance grant to be signed. In the past, Grand County received \$20,000 to do weed work. This year the BLM will be granting \$40,000.

Commissioner Manguso moved to authorize the Chair to sign the application for local assistance to Grand County from the BLM for noxious weed management.

The motion passed unanimously.

Undersheriff Wayne Schafer presented the Board with a new Colorado Peace Officers Standard and Training (POST) grant in the amount of \$158,268.60. The POST grant covers three counties; Grand, Routt and Moffat Counties. The money is used for peace officer training and equipment.

This has been reviewed by legal.

Undersheriff Schafer stated that he is working to put together a board to determine who will get the grants.

Commissioner Manguso moved to approve the POST grant in the amount of \$158,268.60

The motion passed unanimously.

### Manager and Attorney Items

Interim Manager Ed Moyer stated that he drafted a block grant philosophy and mission. It captures the last discussion he had with the Board.

Interim Manager Moyer presented a contract in the amount of \$1,800 for backflow valves. All three of the backflow valves have failed. This contract is with Rusty Pipes Mechanical and Plumbing. Mr. Moyer noted that no other plumbers were available.

Commissioner Manguso moved to approve the Construction Contract with Rusty Branstetter, dba Rusty Pipes for the back flow valves.

The motion passed unanimously.

Mr. Hassler stated that work on the Innsbruck Homeowners proposed local district for paving is waiting for the Homeowners Association to make some decisions.

Mr. Hassler is working on the insurance regarding the fair events. The food vendors are now covered.

### Consent Agenda

Resolution No. 2016-6-39, "A RESOLUTION APPROVING AND AUTHORIZING THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, STATE OF COLORADO TO EXECUTE THE FIRST AMENDMENT TO THE RENTAL AGREEMENT BY AND BETWEEN POWER WORLD, LLC AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, STATE OF COLORADO"

Resolution No. 2016-6-40, "A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, STATE OF COLORADO DENYING THE REQUEST BY TEAM PLAYER PRODUCTIONS, INC. FOR A WAIVER OF PERMIT FEES"

Resolution No. 2016-6-41, "A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, STATE OF COLORADO APPROVING THE WAIVER OF A BUILDING PERMIT FEE FOR THE GRAND LAKE AREA HISTORICAL SOCIETY"

Resolution No. 2016-6-42, "A RESOLUTION APPROVING AND AUTHORIZING THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, STATE OF COLORADO, SITTING AS THE GRAND COUNTY BOARD OF SOCIAL SERVICES, TO EXECUTE AMENDMENT NO. 2 TO THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE STATE OF COLORADO, DEPARTMENT OF HEALTH CARE POLICY AND FINANCING AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, STATE OF COLORADO CONCERNING A MEDICAID INCENTIVE PROGRAM"

Resolution No. 2016-6-43, "A RESOLUTION APPROVING AND AUTHORIZING THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, STATE OF COLORADO TO EXECUTE A MODIFICATION TO A CONTRACT BETWEEN THE BUREAU OF LAND MANAGEMENT AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND, STATE OF COLORADO CONCERNING MAGNESIUM CHLORIDE APPLICATIONS"

Commissioner Manguso moved to approve the Consent Agenda.

The motion passed unanimously.

Commissioner Manguso moved to convene an Executive session pursuant to C.R.S. 24-6-402(4)(b), to obtain legal advice from the County Attorney on the proposed county manager contract, and pursuant to C.R.S. 24-6-402(4)(e), to determine positions relative to matters that may be subject to negotiations and instructing negotiators regarding the proposed County Manager contract.

The motion passed unanimously.

Commissioner Manguso moved to reconvene the regular meeting 10:10 a.m.

The motion passed unanimously.

I, E. Jane Tollett, hereby attest that the minutes of this executive session were recorded in accordance with CRS 24-6-402 and confined to the topic authorized for discussion in the executive session.

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Commissioner Tollett stated that she is sending a contract to the candidate for county manager and the Board hopes to make an announcement today.

#### Board Business

Mr. Moyer reported that the Board received a letter from the Department of Interior regarding Payment In-Lieu of Taxes (PILT) money. For 2016, Grand County will be receiving \$1,453,399. Mr. Moyer reported that the County has received the money.

The Board received a letter from the Town of Hot Sulphur Springs and beginning in 2017, there will be a 1 percent increase in water and sewer.

#### Calendars

July 6 Rural Health Network meeting at Mountain Parks Electric at 6:30 p.m.  
July 11 Council on Aging at 9:30 a.m.  
Staff meeting at 1:30 p.m.  
Fairgrounds walk through at 5:30 p.m.  
Lunch with Gary DeFrance with the mayors, Forest Service, and Chambers  
July 13 Blowing in Wind after action meeting at 2:00 p.m.

Commissioner Tollett stated that she went to QQ last week and one of the concerns is that CPW is cutting a lot of the money that has been used to fund the inspection program for zebra mussels. This is a concern due to the fact that the Three Lakes does not have an infestation.

Commissioner Linke attended the ground breaking ceremony for the new playground equipment at the Granby Elementary.

#### Public Hearing – Grand Foundation, Special Events Permit – Liquor License

The public hearing scheduled to begin at 10:45 a.m. was called to order by Chairman Tollett at 10:45 a.m.

County Clerk and Recorder Sara Rosene presented:

Megan Ledin, Executive Director/Event Manger of Grand Foundation is requesting a Special Events Permit. The events will be held on July 22, 23, and 24, 2016 at Colorado Adventure Park, 566 County Road 721, Fraser.

They will sell, malt, vinous, and spirituous liquor from 10:00 am until 11:00 pm each day listed above.

All fees have been paid to the State and to Grand County. The Sheriff's Office has posted a notice and no remonstrance has been received; therefore, I would like to recommend approval of their request.

Commissioner Manguso moved to approve the Special Event Permit for the Grand Foundation on July 22, 23, and 24, 2016 at the Colorado Adventure Park as presented.

The motion passed unanimously.

Road and Bridge Update, including cancellation of Road Hearings and no further acceptance of roads for County maintenance

Road and Bridge Superintendent Chris Baer Hauled 240 cubic yards of gravel to the slough on County Road 1 this year at a cost of \$27,077.48. That is approximately 12 loads.

Commissioner Manguso noted the pipes that were installed are not getting much water out. Commissioner Linke stated that dewatering is still a good idea, but the pipes installed are not doing much good.

The Board would like staff to look at low impact solutions.

Commissioner Manguso suggested that Mr. Baer contact some local contractors and see if they have any thoughts on what could be done.

Mr. Baer stated that Warren Ward surveyed the intersection of County Roads 5 and 521. Mr. Ward found that the pin is about eight to 10 feet into the driveway.

Mr. Baer stated that Brian Kerber would like a surveyor to come in and check the work that was done. If the pin is correct, Mr. Kerber will have the fence down by next weekend.

Commissioner Manguso stated that she would like to have a workshop to discuss driveway permits.

Mr. Baer is working with Tim Gagnon and Everist on County Road 804. Mr. Baer has stressed that the work be done correctly and by the end of July.

Commissioner Manguso moved to authorize the Chair to sign a letter extending a contract of employment between a perspective County Manager and Grand County. The motion includes signing the employment agreement.

The motion passed unanimously.

Mr. Moyer stated that Everist will pay the costs of the geotech work and the engineering work associated with the repair work. They feel that the engineering costs that were in the contract for the final lift, Everist should not pay. Bowman will have additional contract costs in the amount of \$3,769 that would be Grand County's responsibility. The \$3,769 is over the contract price due to the project running over.

Commissioner Manguso believes that the cost should not be that of the County.

Mr. Moyer stated that Everist was on a different project, so County Road 804 was behind that. Re-milling the road took some additional time and put the County behind.

Forest Service Road 112 (Cabin Creek) from the Highway 125 side over to the Routt National Forest side is closed because of logging operations.

Commissioner Manguso stated that the Board had a workshop and discussed whether it would continue to accept requests for maintenance or acceptance of County Roads. When the County takes over a road, it maintains and plows roads.

Every year the County holds road hearings. Mr. Baer stated that if the County is not going to accept new roads, he was not sure that the Board needed to hold hearings. Mr. Baer would like to suspend the 2016 Road Hearings.

Commissioner Linke moved to accept the recommendation of the Road and Bridge Superintendent and suspend the 2016 Road Hearings and not take any county roads on for maintenance.

Discussion: The Board noted that in 2016, the Board considers the roads for 2017. It is only for 2016 which applies to maintenance in 2017

The motion passed unanimously.

Mr. Moyer reported that Lee Staab from Minot, North Dakota has accepted the Grand County Manager's position. He starts on Monday, August 29, 2016.

#### Rocky Mountain National Park – Annual Park Update

Larry Gamble, Chief of Planning and Projects Stewardships for Rocky Mountain National Park with Kyle Patterson, public information officer appeared before the Board. Interim Park Superintendent Ben Borbowsky was not able to make it to the meeting today.

Mr. Gamble stated that he would like to cover with the Board:

1. The East Shore Trail
2. Grand Ditch breach and restoration work
3. Three Lakes Water Quality
4. RMNP visitation rates

Mr. Gamble stated that in 2009, the Park Service received wilderness designation. In the designation, the Park Service was to consider whether to allow bicycle use on the East Shore Trail. The Park Service was given a year to identify an alignment line. The designation legislation was to consider allowing bicycle use in a way that did not cause harm to resources or conflict among users.

The Park Service identified the alignment line and embarked on a NEPA process at the insistence of Grand County. An environmental assessment was developed and the conclusion was that the Park Service felt they had mitigation measures in place that would avoid impacting resources or conflict among users. The Park Service made a decision called a Finding of No Significant Impact to allow bike use on the East Shore Trail from the Shadow Mountain Dam north to Park Boundary.

Because the Park Service was looking to reroute .25 mile of trail, that was considered a new trail. The Park Service had to go through rule making which involved another public process. The proposed rule was published in December 2015. There is a 60-day public comment period which ended around February 1, 2016. They received about 33 comments total. The Park Service received a 16-page comment from the former manager of the Continental Divide Trail. That is important because one mile of the two miles that they are looking to open to biking use is shared with the Continental Divide Trail.

A number of law and policy matters were brought up in the 16-page letter that need to be addressed by Park Service. Once there is a final rule, it will be published. Mr. Gamble believes that it will be several months before the Park Service can respond to the comments received to determine the path forward.

The Grand Ditch breach was in 2003. Somewhere along the ditch in a high runoff year, the ditch got blocked. Water flowing down the ditch to the point of the blockage spilled over and went down a very steep ditch embankment into Lulu Creek and eventually into the headwaters of the Colorado River. There was a massive amount of destruction in the Park from all of that water. It deposited many cubic yards of sediment predominately in the Lulu City wetlands. Mr. Gamble stated that tens of thousands of trees washed away. Many cubic yards of material was deposited.

The Park reached a settlement in the amount of \$9 million with a water supply and storage company which owns and manages the ditch. That was an out-of-court settlement. The Park Service then embarked on a planning process. They did an Environment Impact Statement that the County was involved in as a cooperating agency because of mobilization of the sediment and potential effects of downstream water quality.

The Park Service will be removing sediment and recontouring to allow the river to return to its natural process. That will take place over the next few years. The immediate work is to stabilize the slope in the very upper reaches where the breach occurred.

Kyle Patterson reported information on Park visitation over the last couple of years:

2014 3.4 million visitors

2015 4.1 million visitors

That is a 21 percent increase in one year

As of the end of May 2016, the visitor count is up 11 percent  
In 2014, Rocky Mountain National Park was the 5<sup>th</sup> most visited national park and in 2015 it was the third most visited park.

National parks throughout the country are seeing a significant increase. Ms. Patterson noted that Rocky Mountain National Park has one-half the staff of Yellowstone and one-third the staff of Yosemite.

Ms. Patterson stated that 80 to 85 percent of the visitors come in through the east side of the Park. There were over 200 events celebrating the 100<sup>th</sup> anniversary of the Park.

Ms. Patterson stated that the Park works with Grand Lake Chamber, Granby Chamber and the Tourism Board to promote the Park.

Ms. Patterson stated that with the growth in attendance, staff is mindful of:

1. Visitor and staff safety
2. Operational capacity
3. Visitor experience
4. Resource protection

Ms. Patterson stated that staff is seeing crime increasing on the east side of the Park.

Last year there was an increase of illegal fires in the park.

Mr. Gamble noted that there is a role for Rocky Mountain National Park in the Grand Lake clarity work.

#### Board Business

Mr. Moyer stated that the Library District would like to meet with the Board of Commissioners on July 13 at 10:00 a.m.

#### Red Hawk Ranch Water & Sanitation District – Service Plan Amendment

The following is all or part of staff's Certificate of Recommendation to the Board as it was provided by staff for inclusion in the minutes of the meeting held on July 5, 2016.

PROJECT NAME: Red Hawk Ranch Water & Sanitation District Service Plan Modification  
APPLICANT: Red Hawk Ranch Water & Sanitation District represented by Scott Bradley and Jennifer Ivey, ICENOGL SEAVR POGUE  
LOCATION: Tabernash Area, proposed Red Hawk Ranch Subdivision, Grand County, Colorado  
ZONING: N/A  
APPLICABLE REGULATIONS: Section VII, Red Hawk Ranch Service Plan CRS 32-1-207 (1) – (3), Material Modifications to County Approved Service Plans  
EXHIBITS: BOCC Resolution No. 2012-10-43 with approved Red Hawk Ranch Water & Sanitation District Service Plan and Request for Modification of Service Plan  
STAFF PLANNER: Bill Gray, County Planner  
REQUEST: A request to modify the approved Red Hawk Ranch Water and Sanitation District Service Plan

#### I. DISCUSSION

The Board of County Commissioners approved the Service Plan of Red Hawk Ranch Water and Sanitation District on October 23, 2012, by Resolution No. 2012-10-43. The BOCC's approval limited the activities of the Red Hawk Ranch Water and Sanitation District to negotiating an agreement with Tabernash Meadows Water and Sanitation District for water and wastewater service for the Red Hawk Ranch.

Red Hawk Ranch is a proposed 228-unit residential subdivision situated immediately south of Pole Creek Valley. The development is located within the Tabernash Area Urban Growth Boundary. The number of units, lot size and County Master Plan Policy dictate that the development must be served by adequate public facilities, which in this area of Grand County includes central water and wastewater facilities. In addition, it is located adjacent to the boundary of Tabernash Meadows Water and Sanitation District. TMWSD is a special district that was established to provide water and wastewater services and Red Hawk Ranch is included in its future service area.

The term for the negotiation for a service agreement is scheduled to expire on October 23, 2016. If no agreement is reached Red Hawk Ranch Water and Sanitation District is required to file a petition for dissolution. To date, the negotiation has been unsuccessful between the two districts. Due to this Red Hawk Ranch Water and Sanitation District is concerned that they will not be able to satisfy this condition. As a result, Red Hawk Ranch Water and Sanitation District has asked the county to consider an administrative amendment to their approved service plan to extend the term for finalizing a service agreement with TMWSD. Red Hawk Water and Sanitation District is requesting an additional year to negotiate a deal for service.

The approved service plan and CRS 32-1-207(1)-(3) addresses material modifications to County-Approved Service Plans. A material modification of an approved service plan is stated to be a change of a basis or essential nature, which includes the following:

- a. Any addition to the types of services provided by the special district;
- b. A decrease in the level of services provided the special district;
- c. A decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or
- d. A decrease in the existing or projected need for organized service in the area.

It is Staff's opinion that a change to the term for negotiating a service agreement with Tabernash Meadows Water and Sanitation District is not a material modification to the service plan. There is not a clear process in the Statute for modifications that are not considered material in nature. The idea presented by Red Hawk Ranch Water and Sanitation District for an administrative amendment is warranted. This process, however, should not be a desk amendment by the Community Development Director.

The BOCC in its approval of the service plan is the entity that established the timeframe for negotiations and the dissolution of RHRWSD if no agreement was reached. Therefore, if the term for negotiation is to be changed than it is Staff's position that the BOCC needs to grant the extended term to RHRWSD.

Extending the term is appropriate for the following reasons:

- County master plan policies supports development in the Tabernash area
- Adequate public facilities are provided or nearby to support new development in the area
- Additional quality housing is needed in Grand County in locations near major transportation routes, water and wastewater facilities, public safety facilities and jobs and commerce.
- RHRWSD believes they are in a better position both economically and politically to negotiate a service agreement with or incorporation into TMWSD for water and sanitary sewer service.
- Successful negotiations between these two Districts could lead to the dissolution of RHRWSD and improve the potential of water and wastewater services being extended to other adjacent areas, such as the Town of Tabernash, EJ Vulgamott Additions to Tabernash and maybe even parts of Winter Park Highlands, Grand County Village, Alpine Acres and Alpine Park and areas around or in proximity to these developments.
- A successful negotiation between these two District would be a real benefit to Grand County.

## II. RECOMMENDATION

It is Staff's recommendation to the Board of County Commissioners to extend the term for negotiation as established by BOCC Resolution No. 2012-10-43 from October 23, 2016, to December 31, 2017 as requested by Red Hawk Ranch Water and Sanitation District and if negotiations are not successful by the end of the extended term they will initiate dissolution in the same manner as is outlined in the approving resolution (2012-10-43) for the service plan.

[End of Staff's memo]

Board President of the Tabernash Meadow Water and Sanitation District Whitney Kemper stated that they have a new attitude about a lot of things. He is not opposed to this. Mr. Kemper came to the Board meeting to encourage this change.

Mr. Kemper stated that the District and Mr. Bradley are making some progressive advancements in talking of the integration of Red Hawk Ranch into the District.

Tabernash Meadows Water and Sanitation District Board member Dick Sprague stated that he fully supports the opportunity to negotiate with Red Hawk Ranch.

Red Hawk Ranch Development owner Scott Bradley stated that he has been working on obtaining water and sewer since he obtained the preliminary plat on the project 34 years ago. He is confident that the District and he can work something out.

Mr. Sprague stated that currently the District has three wells; two in the alluvium (not under the influence of the river) and one is a deep well. The deep well is very high in fluoride. It would help the district to have other wells to produce redundancy.

Commissioner Linke moved to modify the Service Plan which is extending the term for negotiations as established by Board of County Commissioner Resolution No. 2012-10-43 from October 23, 2016 to December 31, 2017, as requested by Red Hawk Ranch Water and Sanitation District and recommended by Community Development Department.

Discussion: Commissioner Manguso hopes this works. She stated that it makes sense to have one water and sewer district in that area.

The motion passed unanimously.

Looking Glass Townhomes, Sketch Plan (splitting two townhomes to recreate separate lots)

The following is all or part of staff's Certificate of Recommendation to the Board as it was provided by staff for inclusion in the minutes of the meeting held on July 5, 2016.

PROJECT NAME: Looking Glass Townhomes Sketch Plan  
APPLICANT: Patrick S. Bremner  
LOCATION: Lot S-55, Winter Park Ranch 5th Filing / 256 GCR 850 (AKA Looking Glass Lane)  
APPLICABLE REGULATIONS: Zoning Regulations, Subdivision Regulations  
ZONING: Residential  
EXHIBITS: Sketch Plan (Plat), Site Photos, Vicinity Map  
STAFF PLANNER: Brett Hanlon  
REQUEST: The applicant is proposing a subdivision in order to split a property and a two-unit townhome building into two separate properties.

I. DISCUSSION

The applicant is proposing a subdivision in order to split a property and a two-unit townhome building into two separate properties. The two townhome dwelling units are identical. Each unit is approximately 2,700 square feet in size and has four bedrooms, four bathrooms, a two car garage and a separate entrance. The two units share a driveway. The property features a shared parking area near the top of the steeply sloping driveway. According to the plat, this shared parking area is located within the GCR 850 right-of-way. If this is the case, this shared parking area will need to be removed because it is not on the applicant's property. At this time, there are no plans for construction on the site, except for perhaps an extension of the parking area to accommodate the required six parking spaces. This subdivision is being proposed in order to create two legal lots which will facilitate refinancing and enable the sale of one of the properties.

II. REGULATIONS

A. ZONING REGULATIONS

The zoning of the parcels involved in this proposal is Residential. Both units in the townhome building are served by public water and public sewer. The minimum lot size for a property that is served by both public water and sewer is 7,000 square feet. The applicant is proposing two similarly sized lots. One lot will be .32 acres (13,939 square feet) and the other lot will be .35 acres (15,246 square feet).

- (a) This zone allows for multiple-family dwellings, so the existing and proposed use of the lot(s) is consistent with the zoning regulations.
- (b) This zone requires 30' minimum front yard setbacks, 5' minimum side yard setbacks and 20' minimum rear yard setbacks. This proposal is consistent with these setback requirements.
- (c) The applicant's lot meets the Minimum Lot Area requirement in the Residential Zoning District.

B. SUBDIVISION REGULATIONS (MULTI-FAMILY) – Section 7.1 – Sketch Plan

A subdivider shall consult with the Grand County Community Development Director regarding his proposed subdivision and shall submit a sketch plan of his subdivision prior to submitting the materials required for preliminary plat approval; the following items shall be submitted by the subdivider with the sketch plan:

- (a) Relevant site characteristics and analyses applicable to the proposed subdivision.

The applicant has included relevant site characteristics and analyses in the application narrative.

1. Utilities – The applicant has described the utilities that service the property and has highlighted the fact that each unit will have separate utility meters and billing.

a. Electrical: Individual 100 amp circuit box for each unit. Electric wiring starts from the above ground electrical pole on the southeast corner of the lot. The lines are buried as they travel from the electrical pole to the townhome units.

b. Water: A ¾ inch pipe provides the townhome units with water. The pipe travels from the main water line located within the GCR 850 right-of-way to each of the units. There are independent lines for each of the units.

c. Sewer: There are separate sewer lines for each of the units. The sewer lines exit out the back of each of the units and run to a larger sewer line that runs within the rear yard utility easement of the property.

d. Gas: Separate gas service for each unit is provided from a gas line that runs within the GCR 850 right-of-way.

2. Driveway / Parking

a. The property's two garages provide four of the six necessary parking spaces for the townhome building. A site plan will need to be provided that identifies all six of the required parking spaces and demonstrates that these parking spaces meet zoning regulations (Section 14.4 of the zoning regulations requires all parking spaces to be set back a minimum of fifteen (15) feet from all rights-of-way and be 10'x20' in size). In order to meet this requirement, the applicant may need to expand the driveway/parking area around the sides of the townhome building. The applicant has expressed a willingness to do this.

b. The driveway features a steep descent as it travels from GCR 850 to each of the garages. Road and Bridge Standards state that the driveway cannot have more than a 5% change in grade for the first 50 feet as the driveway travels from a public county road. The plat that the applicant has submitted indicates a 34.6% change in grade for the driveway—all of which is within 50 feet of the public county road. Staff has reviewed the building permit for the Looking Glass Townhomes and there is no documentation for how the driveway was approved. Community Development staff will work with Road and Bridge staff to determine what driveway standards applied when this townhome building was originally constructed and staff will ensure that the applicant has the proper approvals from Road and Bridge. Staff has created a condition that requires the applicant to provide a driveway profile that shows the driveway's change in grade for the first 50 feet from the road. This profile will allow Grand County Road and Bridge to determine if this driveway complies with the current driveway standards, if a driveway variance is needed, or if the driveway complies with the driveway standards that existed in 2002—when the townhomes were built.

3. Open Space

a. The applicant has provided a coverage table that shows 81% of the property will be open space.

(b) Reports concerning streams, lakes, topography, geology, soils and vegetation

This requirement has been met.

The applicant has provided a statement explaining there are no streams or lakes on the property. There are trees and vegetation on the property, but because there is no new construction, this vegetation will not be disturbed.

(c) Reports concerning geologic characteristics of the area significantly affecting the land use and determining the impact of such characteristics on the proposed subdivision

There is very steep topography on this property. The land slopes downward from GCR 850 to the townhome units. Staff has addressed driveway concerns with a condition of approval that was discussed above. Staff is also creating a condition of approval that will require the applicant to show drainage patterns and the proposed location for snow storage on a site plan that will need to be provided prior to applying for preliminary plat approval.

(d) In the areas of potential radiation hazard to the proposed future land use, these potential radiation hazards shall be evaluated.

Not applicable – there is no new construction being proposed.

(e) A sketch drawing and other documentation showing the proposed layout of plan of development area, the total number and types of dwelling units and other buildings, the total area of greenbelt, and open space and their location, and the proposed area for school sites if applicable.

The applicant has provided a plat drawing that shows the proposed layout of the property. The sketch plan/plat shows that one lot will be .32 acres and the other lot will be .35 acres. The plat also includes a coverage table that shows there will be adequate open space.

### III. STAFF COMMENTS

The applicant has explained to staff that he would like to create a party wall agreement in lieu of incorporating an owners' association and recording restrictive covenants for the property. Staff does not see a problem with this and will allow it subject to the approval the Grand County Attorney's Office. This party wall agreement must be provided prior to applying for preliminary plat approval.

Staff sees legal access (driveway grade) and parking as the primary issues with this proposal. It is staffs opinion that these issues can be worked through and should not prevent the applicant from moving forward.

Each of the utility lines (gas, electric, water, sewer) split to service the separate dwelling units. The plat needs to be updated to establish utility easements for these utility lines so that the utility lines can be maintained legally. Additionally, the party wall agreement may need to reference these utility easements.

Given the characteristics of this proposal—existing building, separate utilities, platted property—staff would like to recommend combining the Preliminary Plat and Final Plat review processes. If the BOCC feels that this would be inappropriate, these review processes will be brought forth separately.

### IV. STAFF RECOMMENDATION

Staff recommends the approval of the Looking Glass Townhomes Sketch Plan with the following conditions to be met prior to submitting an application for preliminary plat approval:

1. The applicant will need to provide a driveway profile that shows the driveway's change in grade within 50 feet from the road.
2. If the driveway does not meet Road and Bridge Driveway Standards, it must be brought into compliance (via a Road and Bridge Variance or a new driveway plan).
3. The applicant will need to confirm the location of the shared parking area. If it is located within the GCR 850 right-of-way, this parking area will need to be removed.
4. The applicant shall submit a site plan that identifies the six required parking spaces, site drainage and snow storage. This site plan will need to show that all of the parking spaces meet zoning requirements
5. The applicant will need to submit a party wall agreement.
6. The applicant shall meet all preliminary plat requirements.
7. Separate utility easements will be needed for the utilities as they split off to service each of the separate units.

[End of Staff's Certificate]

Pat Bremner, owner of the property, stated that driveway where you enter from the main road is where it is steep. It grade is 24 percent. Mr. Bremner stated that he does not know of anything they can do to fix that driveway.

Mr. Bremner is asking for a variance so the driveway is legal. Mr. Bremner stated that 15 years ago he had this conversation with Road and Bridge but did not file a formal request. Mr. Hanlon noted that there were no grade standards when Mr. Bremner built his home.

Mr. Bremner stated that the lower part of the driveway is 34 percent but only at the very north edge. It does flatten out at the garage. Mr. Bremner is not in favor of removing the additional parking spaces but will do so if required.

Mr. Bremner stated that if he does not get the variance, he will not be able to do this split the duplex.

Commissioner Manguso noted that Mr. Bremner has been through the County process before. The house was done correctly. The County let the two separate units happen. Commissioner Manguso stated that the parking regulations were changed in 2006 to require three parking spaces for three bedrooms. The Board can set the number of parking spaces to two and Commissioner Manguso is in favor of doing that.

Commissioner Manguso stated that this is a paved driveway and it has been there for 15 years. The worse thing that could happen is that someone could crash into his or her own garage. Commissioner Manguso believes that this is buyer beware.

Commissioner Tollett agrees that two parking spaces would be enough.

Mr. Gray agrees that from a practical argument, yes this driveway has existed, yes there are two parking spots, and yes it functions. Mr. Bremner has applied for a subdivision and the County is required to take him through the County process and determine that he is in compliance with the codes that exist at the time he proposed his subdivision. Mr. Gray needs to be able to formally address the driveway and the parking. Mr. Gray stated that there are procedures that have been included in the review process that allow someone to propose variances to the County standards so long as there are justifiable reasons to do that. It would behoove the County to apply the regulations equitably to all the applicants and it establishes that Mr. Bremner's duplex is finished and is in compliance with County regulations and building codes. That is important for the sale of units into the foreseeable future. This puts the County into a good position as well as Mr. Bremner.

Mr. Gray stated that the County has a regulation regime that his office is trying to fit this in. It is a delicate balance. Mr. Gray believes that Mr. Bremner has a good argument for a variance and suggested that he proceeds through the process.

Commissioner Manguso would like staff to look at the parking regulations to see if it should allow some flexibility administratively.

Commissioner Linke moved to approve the Looking Glass Townhomes Sketch Plan as presented by Community Development.

The motion passed unanimously.

#### Marijuana Sales Tax and Excise Tax Discussion

County Attorney Hassler stated that the Board asked for information on imposing a sales and an excise tax on marijuana sales. The Board could consider imposing an excise tax on the first sale or transfer of unprocessed retail marijuana to a retailer or a retail marijuana manufacturing or a retail grower. The excise tax is not considered a sales tax. It is a tax on the fact of doing business. The reason that it is not a sales tax is because it is not the sale to the ultimate consumer. It is a sale to a processor so they impose an excise instead of a sales tax.

The statutes provide for this excise tax with a maximum rate of 5 percent of the average market rate. The Department of Revenue calculates the average market rate on a biannual basis every six months. The excise tax proceeds can be used in any way by the County. The County is not bound by statute or constitutional provision. The County can dedicate the money to any given item the Board so chooses. The Board could limit the tax to an agency (Road and Bridge or Public Health as an example) and could put that language in the ballot question.

In passing taxes, the County would have to comply with the taxpayer bill of rights requirements. The County would estimate the amount of revenue and explain how the tax works. The ballot question would also have to ask the voters to approve the County collecting, keeping, and spending all of the revenue generated unless the Board wants to put a limit on the tax.

Mr. Hassler stated that sales tax would be a tax on the sale to the ultimate consumer. At the moment, there is litigation in the Colorado Court of Appeals challenging Adams County imposition of a sales tax throughout Adams County. Based on reading the briefs, Mr. Hassler believes that it is enough of a question that it would not be efficient to go ahead and pursue a sales tax question at this time.

Mr. Hassler stated that Adams County is relying upon is the phrase in the state retail marijuana sales tax statute that "nothing in the paragraph shall be construed to prevent a local government from imposing levy and collecting any fee or any tax upon the sale of retail marijuana or retail marijuana products or upon occupation or privilege of selling retail marijuana products." The city's position is that there is no statute that directly says that counties are authorized to levy a sales tax. Adams County takes the position that the language in one section of the statute says that it shall not be a limit on the county's ability to levy sales tax. The city is suing the county because the city is saying there should be a statute that directly says that a tax can be imposed by a county.

There are three counties that impose sales tax on retail marijuana; Adams, Denver, and Pueblo. Denver is a city and county and has the authority to impose the tax. Pueblo is a statutory county.

Mr. Hassler stated that the commissioners will have to refer a ballot question to the ballot.

Mr. Hassler stated that a county cannot impose an excise tax within a municipality that already levies an excise tax. Fraser has classified its tax as an excise tax.

Craig Clark from Grow House Fraser stated that he does not have his own cultivation. He purchases from various cultivations throughout the state who are licensed on both the state and local level. The seller pays the excise tax as assigned by the local licensing authority and the state.

Mr. Clark understands that Serene Wellness in Fraser has a cultivation in Clear Creek County and they run product from the grow to the store and are subject to the excise tax in Clear Creek County.

Mr. Clark stated that if Grand County chose to add a sales tax that applied to every business in Grand County, which would increase the extra sales tax to 7 percent.

Fraser Town Manager Jeff Durbin stated that the Town of Fraser was the first in Grand County to allow both medical and retail sale of marijuana. Back then, the other municipalities and the county said "no." Fraser moved forward with a local economic development and revenue opportunity for the community understanding that things change. Grand County now allows sales.

The town does not allow grows or infused product manufacturer. There are two businesses in Fraser; one that is just retail and one that is retail and medical. The voters in Fraser adopted a 5 percent "excise" tax for both medical and retail.

Mr. Durbin stated that the town of Fraser self collects the excise tax.

Mr. Durbin described the taxes in Fraser

- 5 percent municipal sales tax
- 1 percent county sales tax
- 2.9 percent state sales tax
- 5 percent Fraser excise tax
- 10 percent state marijuana tax

The total is 23.9 percent tax in Fraser.

David Michel of IgadI stated that he understands the attraction to the excise tax. It is far scarier to Mr. Michel than a sales tax. A sales tax hits the purchaser whether the purchaser is from Grand County or the Denver metropolitan area. There are a lot of people that come up from Denver to stock up.

Mr. Michel stated that a sales tax is inappropriate at this juncture considering IgadI is only a year out from the first operational facility. Mr. Michel stated that he is not raking in money. The money that is being made is being reinvested back into the facility. A tax will hamper growth or move growth somewhere else.

Mr. Michel stated that the competitive advantage for IgadI is not between Fraser and unincorporated but between Grand County and the Denver metropolitan area.

Mr. Michel stated that Grand County does not have a lot of industry. That which it does have will be going away very soon with the mine closing. IgadI is one of the few that is building real blue color industrial jobs in Grand County where people can make a living.

Mr. Michel stated if there were an excise tax, IgadI would have to consider where it really wants to build.

Mr. Michel explained the mechanics of the excise tax.

For example: The average pound of marijuana sold was \$2,000 per pound. The tax on that was 15 percent which meant a tax \$300. That number has dropped a little. The excise tax is not based on the percentage of sales. It is an excise tax based on what the state says is the average selling price of a pound marijuana. Every pound has the same 15 percent excise tax.

Mr. Michel stated that most governments want to attract industry because they provide steady year-round jobs. IgadI has health insurance, 401K plans, and they are getting ready to come to the Board and propose an additional 7,500 square foot production facility.

Mr. Michel stated that the excise tax is on the producer. IgadI cannot afford to have a facility in Grand County if there is an additional excise tax. This tax will only affect IgadI.

Mr. Clark echoes IgadI's position regarding an excise tax. IgadI has done a great job on the facility. Mr. Clark stated that prices of wholesale marijuana are swinging all over the place on the recreational side. The prices will continue to swing for some time. The County should want a great producer that has a competitive advantage over those outside of Grand County. The return that Grand County will get due to increased jobs by giving the competitive advantage to producers in Grand County is by far more than what Grand County could get with the excise tax.

Mr. Clark would like the sales tax to be left alone.

Commissioner Tollett stated that Mr. Michel made some good points. The Board wants to support business and be a business friendly community. Commissioner Tollett stated that she would like to think about it some more.

Commissioner Manguso concurred with Commissioner Tollett. Commissioner Manguso stated that Mr. Michel is 10 percent less than Fraser and she noted that is quite a tax benefit. Commissioner Manguso stated that the sales tax made the most sense to her but hearing that it would affect Fraser is a struggle. She does not want to tax something out of business.

Mr. Michel stated that the black market needs to be addressed in Grand County. The County needs to address that issue, not increase taxes on the legal market.

Mr. Michel stated that IgadI has provided support to different local organizations. Mr. Michel stated that he may be working with the County to work on an inspection guide.

Commissioner Linke would like to think about this some. He would like to see a legal business run the black market out.

There being no further business to come before the Board, the Regular meeting was adjourned at 4:35 p.m. The minutes were prepared by Clerk and Recorder Sara L. Rosene. Approved this \_\_\_\_\_ day of July 2016.

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E. Jane Tollett, Chair

Attest:

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Sara L. Rosene, Clerk and Recorder