

## ROUTT COUNTY PLANNING COMMISSION

### DRAFT MINUTES

June 21, 2018

The regular meeting of the Routt County Planning Commission was called to order at 6:00 p.m. with the following members present: Acting Chairman Troy Brookshire and Commissioners Geoff Petis, Brian Arel, Bill Norris, Roberta Marshall, Peter Flint, Paul Hebert and John Merrill. Commissioners Andrew Benjamin, Karl Koehler and Steve Warnke were absent. Planning Director Chad Phillips, Assistant Planning Director Kristy Winser and staff planners Chris Brookshire and Jillian Ferguson also attended. Sarah Katherman recorded the meeting and prepared the minutes.

#### PUBLIC COMMENT

There was no public comment.

#### MINUTES – April 5, 2108

Acting Chairman Brookshire clarified his comments regarding the Colorado Parks Wildlife (CPW) involvement in the Waterbody Setback Permit process (page 14). He stated that his comment about not trusting CPW was in the context of the role of CPW as an advisory body to Routt County. He stated that the possibility of CPW imposing arbitrary or unsubstantiated mitigation or monitoring requirements was too great a risk for the petitioner.

Commissioner Petis moved to approve the minutes of the April 5, 2018 Planning Commission meeting, as amended. The motion was seconded by Commissioner Arel. **The motion carried unanimously.**

#### MINUTES – April 19, 2018

Commissioner Petis moved to approve the minutes of the April 19, 2018 Planning Commission meeting, as written. The motion was seconded by Commissioner Merrill. **The motion carried unanimously.**

#### MINUTES – May 3, 2018

Commissioner Arel moved to approve the minutes of the May 3, 2018 Planning Commission meeting, as written. The motion was seconded by Commissioner Norris. **The motion carried unanimously.**

ACTIVITY: PL-18-125

PETITIONER: Oldcastle SW Group, Inc. dba United Companies, Inc.

PETITION: Renewal of Special Use Permit PP2013-014

LOCATION: 7 miles west of Steamboat Springs; 1.5 miles south of US 40, south of CR 33A

Mr. Ben Langenfeld, an engineering consultant representing the petitioner, stated that the staff report was complete and accurate. He added that since the report was written, the petitioner has provided to the Planning Department the most current data from the recent water testing. He stated that all measures are below limits. Mr. Langenfeld stated that the petition is for a straightforward

renewal of the permit. No changes are proposed. He stated that an anticipated sale that would have used up the stockpiled material had fallen through, but that the plan is to sell the remaining materials and complete reclamation within five years. No new extraction is being requested.

Commissioner Petis asked for a clarification of the water testing. Ms. Brookshire stated that water testing of the adjacent property owner's well water is a condition of approval. She indicated the location of the Anderson and the Tellier residences on a site plan. Mr. Langenfeld stated that the Anderson's well is tested, the water in the Tellier home is tested and the Tellier well is tested. He said that the water at the pit is also tested when there is a discharge. Mr. Jason Burley of United Companies stated that the most recent testing was performed in April, and that the results had just been received. Mr. Langenfeld said that there had been a lapse in sampling during the transfer of operators, but that testing is now back on schedule. In response to a question from Commissioner Arel, Mr. Langenfeld said that testing is semi-annual.

Commissioner Hebert asked about the plan for selling the stockpiled materials and doing the reclamation. Mr. Langenfeld stated that 48,000 tons of material remain, and that the petitioner has estimated that this can be sold in three years, with two years for reclamation.

In response to a question regarding complaints about the pit, Ms. Brookshire stated that Ms. Anderson had filed complaints related to the noise and had expressed concerns regarding the impact on her water. Mr. Langenfeld read condition of approval (COA) #28, regarding the water testing protocol.

Commissioner Norris asked about a discrepancy in the staff report regarding the amount of stockpiled material. Mr. Langenfeld stated that the most recent inventory indicates that 48,000 tons remain. Commissioner Hebert asked what would happen if all the material were sold in one year. Mr. Langenfeld said that reclamation would begin and the project would be completed early.

Commissioner Marshall noted the comments about the landscaping and asked if the petitioner would consider installing a temporary irrigation system to ensure that new plantings would succeed. Mr. Langenfeld said that United will comply with the visual screening requirement and will water the trees. He said that the petitioner would rather not install an irrigation system because they do not know what the landowner will want after the reclamation is complete.

Mr. Langenfeld asked that COA #27 be amended to delete the new language (the last sentence). He stated that the wattles and silt fencing were unnecessary, and that what was needed was a more permanent sediment control system in the form of compacted and vegetated berms. He stated that the goal is stormwater and sediment control. He said stormwater and erosion are monitored and controlled by the Colorado Department of Public Health and the Environment (CDPHE) Permit, the Stormwater Management Plan, the (Division of Mine Reclamation and Safety (DMRS) Permit, Best Management Practices and others measures. Mr. Langenfeld said that the wattles and silt fencing would not increase the efficacy of the sediment control.

Ms. Brookshire noted that the expiration date stated in COA #20 is incorrect. It should be 2023. The amount of stockpiled material should be 48,000 tons. Regarding the landscaping, Ms. Brookshire stated that the evergreens grow very slowly, and that the goal is to screen the operation from the Anderson property. She proposed that deciduous trees would work well because the pit

only operates in the summer. She asked for a clarification regarding the use of berms to protect the drainage that runs through the pit.

Mr. Langenfeld reviewed the site plan and noted that the ground has been graded to slope to the west. He described how the berm directs the water to the sediment pond and ditch toward the state-registered discharge point. He said that any stormwater that enters the site follows this flow pattern. He said that the system is inspected and maintained regularly to ensure that it is working properly. He said that the CDPHE Stormwater Discharge Permit includes the Stormwater Management Plan, which outlines the system.

Chairman Brookshire asked if cleaning up the bottom of the pit would include any additional mining of material. Mr. Langenfeld said that there is no more material to be extracted for sale, but the site will be regraded and the sediment pond will be filled and reclaimed. The operation could include the use of a crusher and screener of stockpiled material, which is sitting on the pit floor. In response to a question from Chairman Brookshire regarding the slow sale of the material, Mr. Langenfeld stated that the material from the pit was originally used for roads built for oil and gas development. Sales slowed when oil and gas development slowed. Then an anticipated sale to CDOT fell through. He said that the pit is well located for local projects, however, and that the five year extension was requested to ensure that the materials could be sold and the pit reclaimed without another permit extension.

#### **Public Comment**

Ms. Diane Anderson, an adjacent property owner, referred to the letter she had submitted. She said that she would really like the material to be sold and the pit to be reclaimed as soon as possible. She said that there have been some issues with the water, but that her main concern was the completion of the project and the reclamation of the site.

Mr. Luke Tellier, the property owner, said that although a few trees have died along the berm that goes into the pit, many have grown well. He said that he did not think the silt fencing would stand up well to the weather, whereas a berm will last. Regarding the demand, he suggested that one or two big jobs would consume all the remaining gravel. If those do not come along, then it might take a number of smaller jobs. Regarding the Anderson's well, Mr. Tellier stated that the bottom of the Anderson's well is at a higher elevation than the bottom of the pit, so the excavation could not be affecting it.

Commissioner Arel asked about the earthen berms. Mr. Tellier said that the berms make excellent wind breaks, and had functioned well.

Hearing no further comment, Chairman Brookshire closed public comment.

Commissioner Arel asked who had suggested the silt fencing and wattles. Ms. Brookshire stated that the recommendation had been made by the Road & Bridge Department. Whether to include it is up to Planning Commission.

Commissioner Petis offered that goal was to balance the rights of the property owner and the adjacent landowners, and stated that the proposed COAs do a good job.

Commissioner Flint asked if the petitioner would request another extension if the material is not sold in the timeframe requested. Mr. Langenfeld stated that another permit extension would be requested if five years is insufficient, but added that three years to sell the material and two for reclamation seems very do-able. Mr. Phillips confirmed that even if a COA stated that no more extensions would be allowed, the petitioner could still request an amendment to change that condition.

Mr. Burkey stated that United Companies acquired the operation last spring, and cannot answer for the actions of the past operator. He stated that the petitioner's goal is to sell the material and reclaim the site as soon as possible, but acknowledged sales are market driven. He stated that most of the material would have been used on US 40, but CDOT went with a different supplier. He stated that the material makes great road base, but could be crushed and screened to make other products.

### **MOTION**

Commissioner Arel moved to recommend approval of the extension of the SUP with the following findings of fact:

1. The proposal with the following conditions meets the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, 6 and 9 of the Routt County Zoning Regulations.
2. The Special Use Permit with the following conditions will not adversely affect the public health, safety, and welfare.
3. The proposal with the following conditions is compatible with the immediately adjacent and neighborhood properties.

This approval is subject to the following conditions:

1. The SUP is contingent upon compliance with the applicable provision of the Routt County Zoning Regulations including but not limited to Sections 4,5,6,8 and 9.
2. The special use permit is limited to uses and facilities presented in the original project plan. Any additional uses or facilities must be applied for in a new or amended application.
3. Any complaints or concerns that may arise from this operation may be cause for review of the Special Use Permit, at any time, and amendment or addition of conditions, or revocation of the permit if necessary.
4. The operator shall prevent the spread of weeds to surrounding lands and shall comply with the Colorado Noxious Weed Act as amended in 2013 and the Routt County approved noxious weed management plan. The permittee shall submit a Weed Control Plan that complies with the Noxious Weed Act of 2003 to be approved by the Routt County Weed Program.
5. In the event Routt County commences an action to enforce or interpret this SUP, the substantially prevailing party shall be entitled to recover its costs in such action, including, without limitation, attorney fees.
6. Soil stockpiles shall have a minimum of 3:1 slopes.
7. No disturbance shall occur within 50 feet of the drainage. All stream and wetlands crossings shall have a 404 permit in place as well as a county water body setback permit.

8. The permittee shall provide evidence of liability insurance, in the amount of no less than \$1,000,000 per occurrence. Routt County shall be named as an additional insured on the policy. Permittee shall notify the Routt County Planning Department of any claims made against the policy. The Certificate of Liability Insurance shall include all permit numbers associated with the activity.
9. The permittee shall be responsible for reclamation as set forth by the Colorado Division of Minerals and Geology gravel mining guidelines. All buffer zones required by the Division of Minerals and Geology permit shall be included as a part of this permit, if they are more stringent than those set forth herein. Any amendments to the Mined Land Reclamation Permit must be approved by the Planning Administrator and may be cause for a review of the SUP.
10. The Special Use Permit is contingent upon the petitioner complying with the applicable requirements of Regulation 1, Section III.D.1.b of the Colorado Air Quality Control Commission, as a minimum standard. The operation shall maintain a State-approved fugitive dust control plan for the sand and gravel operation. In addition, no off-site transport of visible dust emissions shall be allowed. The Planning Administrator may require temporary closure of the facility if dust control measures are not effective. All haul roads shall be chemically stabilized or paved; all disturbed sites shall be watered or chemically stabilized to minimize dust. Watering operations shall be increased immediately in response to periods of high wind. The operator shall take all appropriate actions to mitigate and control dust from all sources, including stockpiles.
11. Fuel, flammable materials, or hazardous materials shall be kept in a safe area as approved by the Chief Building Inspector and Department of Environmental Health. Any spills of fuels or hazardous materials shall be reported to the Routt County Planning Department within three days of occurrence.
12. Accessory structures/uses associated with this permit may be administratively approved by the planning Director without notice.
13. Permits/approval shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this permit. Permits/Approvals that require an ongoing review will be assessed an Annual Fee. Additional fees for mitigation monitoring will be charged on an hourly bases for staff time required to review and/or implement conditions of approval.
14. Transfer of the SUP may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that they will comply with the terms and conditions of the permit. If transferee is not the landowner of the permitted area, Transferee shall submit written consent of the transfer by the landowner. Failure to receive approval for the transfer shall constitute sufficient cause of revocation of the permit if the subject property is transferred. Bonds, insurance certificates or other security required in the permit shall also be filed with the Planning Director by the transferee to assure the work will be completed as specified. Any proposal to change the terms and conditions of a permit shall require a new permit. A new permit must be issued to the Transferee.
15. The permit is contingent upon all permits issued from other agencies including, but not limited to the Division of Reclamation, Mining and Safety (DRMS) Mined land Reclamation (112 Construction Materials Permit), Colorado Department of Public Health and Environment (DCPHE) Air Pollution Control Division (Air Quality Permit), CDPHE (Stormwater Management Plan), Routt County Road and Bridge and Colorado Department of Transportation (CDOT) access permit.

**SPECIFIC CONDITIONS:****Operations Plan:**

16. The Special Use Permit is valid for sales of existing mined gravel including *and* reclamation, or until April 13, 2023.
17. Days of operation shall be Monday through Saturday. No mining, reclamation, or crushing activities shall occur on Sundays and national holidays, which are Christmas Day, Thanksgiving Day, New Year's Day, Fourth of July, Presidents' Day, Memorial Day, and Labor Day. If it is necessary to operate on Sundays or Holidays due to time or weather constraints, the Planning Director shall be notified of the additional days and hours that are needed, and may issue an Administrative permit for a specific period of time.
18. Hours of operation shall be from 7 a.m. to 7 p.m. Extensions of time may be granted by the Planning Director under emergency circumstances.
19. The crusher may be operated a maximum of 50 days per year. The operator shall submit an annual report to the Planning Department that outlines the number of days that the crusher was used. The crusher shall operate only during the hours of 8 a.m. to 5 p.m., Monday through Friday. The crusher shall be actively sprinkled to mitigate dust and shall be located in the bottom of the gravel pit to reduce noise. Two separate crusher operations may be located in the pit at the same time, but only one shall operate at any given time.

**Reporting:**

20. The operator shall submit an annual report that details total materials hauled, remaining reserves, and total number of truck trips to the Planning Department and Assessors Office by February 15<sup>th</sup> of the following year of each year until pit is reclaimed.

**Landscaping/Reclamation/Water Testing:**

21. Any trees planted along the haul road that die shall be replaced with a mixture of pine and fast growing deciduous trees.
22. A mining buffer zone consistent with the gas line owner and Division of Minerals and Geology permit requirements shall be kept to protect the gas line.
23. Best management practices for construction and erosion control shall be implemented by the operator.
24. A water quality and quantity base line test and periodic monitoring shall be performed by a certified private laboratory on Anderson's well, Tellier's well, and the Mined Land Reclamation Board permitted monitoring well located between the mined area and the Anderson's dwelling. Tests for water quality shall be performed semi-annually; tests for water quantity shall be performed annually, and all tests shall be a part of the annual SUP review. If any of the well owners requests a test for quantity semi-annually by the operator, the operator shall do so. If the well testing indicates impacts from the mining operation, the operator shall retain an engineer to immediately mitigate any impacts from

the mining operation. In addition, the operator shall ensure that the availability of quality water to the occupants of the dwelling served by the well shall not be interrupted if it is impacted. If mitigation is not achieved within six months of the discovery of the problem, the operator shall meet with the Board of County Commissioners to determine if a new well must be drilled for the neighbor or if mining shall be discontinued.

**Noise:**

25. Noise from all on-site sources and from haul trucks shall be in compliance with the performance standards in the State noise statute, C. R. S. 25-12-101. Violations of performance standards shall be enforceable by the Routt County Planning Department and may be cause for a review of the SUP by Planning Commission and/or the Board of County Commissioners. Noise monitoring will be performed at the property line semi-annually by Planning staff.
26. Noise within the pit from associated equipment and trucks shall be muffled as much as possible and backup beepers changed to 'duck beepers' for equipment/trucks kept on-site.

**Access and Traffic:**

27. Routt County has the authority to close any county road at its sole discretion if damage to the road may occur by its use. To the extent that a road closure may affect Permittee's operations, Routt County will cooperate with Permittee to allow operations to be continued to a safe and practicable stopping point.
28. Routt County roads shall not be completely blocked at any time. If traffic regulation is deemed necessary, it shall be conducted in conformance with the Manual on Uniform Traffic Control at the permittee's expense and the Permittee shall notify the Routt County Road and Bridge Director, or designee thereof, in advance to review and approve the proposed traffic control plan:
  - a. The permittee shall provide traffic control during any event that may obstruct traffic in accordance with the MUTCD at the intersection of the site access and CR 33A. The traffic control plan shall be submitted for review and approval of the Road and Bridge Department annually prior to the obstruction. This includes but not limited to mobilizations and de-mobilizations of equipment, heavy haul operations, etc.
29. Routt County roads affected by this SUP will be inspected by the Routt County Road and Bridge Department at intervals determined by same. Any road damage repair or maintenance needs above and beyond typical maintenance, attributable to this use, shall be made by the county or third-party contractor as selected by the Routt County Road and Bridge Department and on a schedule determined by same. Permittee shall solely bear the costs of repairs.
30. Permittee shall maintain access roads to minimize impacts to the County Road system during the life of the operations. Maintenance may include sweeping or cleaning and /or

- repairing access points, and application of a dust palliative to private drive as approved by the Routt County Road and Bridge Director and RCDEH.
31. The permittee shall maintain appropriate signage on County Road 33A as directed by the Road and Bridge Department. The permittee will work with CDOT to maintain appropriate signage on US Highway 40.
  32. The permittee shall be responsible for all costs for dust abatement on County Road 33A. The Public Works Director will be responsible for designating the dust abatement schedule and requiring of dust mitigation if necessary.
  33. All Colorado Department of Transportation access permit limitations, CR 33A design limits, the average trip generation listed in the traffic study by LSC dated 4/2/1998, and all other permit requirements must be in compliance if the 80,000 tons per year is exceeded.
  34. The haul route for any aggregate products with a delivery location east to Steamboat Springs, north of the pit, and generally west of the pit shall use CR 33A north and south to US 40 as the haul route. If the delivery location is east of the pit off of CR 33A, CR 33 to points only south of CR 33 and CR 33A intersection, CR 33B, CR 179, CR 43, CR 43A, CR 202, and CR 29, the haul route can go east on CR 33A and south on CR 33. It is not allowed for trucks to use Twentymile Road (CR 33 north and east of the CR 33A/CR 33 intersection) for any part of their haul route.

**Miscellaneous:**

35. Prior to operation, permittee shall submit to Routt County proof of a Sales Tax Account /License.
36. The operation will be reviewed annually by Planning staff to ensure compliance with permit conditions, with recommendations to Planning Commission as appropriate.
37. No junk, trash, or inoperative vehicles shall be stored or allowed to remain on the property.

Commissioner Norris seconded the motion.

**Discussion**

In response to a question from Commissioner Marshall about a potential temporary irrigation system, Mr. Burkey stated that the operator has water trucks with canons that can shoot to the top of the berms. He said that fewer than 10 trees have died, and that the operator will ensure that the trees are replaced and watered.

**The motion carried 8 – 0, with the Chair voting yes.**

**ACTIVITY:** PL-18-134  
**PETITIONER:** Steamboat Chamber Resort Association  
**PETITION:** Conditional Use Permit for Recreational Facilities, Outdoor-Rural for the Hot Air Balloon Rodeo  
**LOCATION:** 35535 US Highway 40; located at Bald Eagle Lake

Commissioner Petis disclosed that he is on the Board of Directors of the Chamber and sits on the Executive Committee. He is also a member of the Lions organization, and has volunteered at the Balloon Rodeo. He stated that he has no financial involvement and feels that he could evaluate the petition impartially. Planning Commission had no concerns regarding his participation.

Ms. Sarah Konopka, the Events Director for the Chamber, reviewed the history of the Balloon Rodeo and described the event. She stated that the request for a Conditional Use Permit (CUP) would allow the event to be conducted annually without the need for a Special Event Permit. She added that Planning staff had suggested that a CUP would be more appropriate for this event due to the impact on areas outside the permit boundary.

In response to a question from Commissioner Petis about the requested start time of 5 a.m., Ms. Konopka stated that set-up begins around 5 a.m., with attendees arriving around 6 a.m.

Ms. Ferguson stated that the event is held on the 2<sup>nd</sup> or 3<sup>rd</sup> weekend of July each year. This year the event will be held on July 14<sup>th</sup> & 15<sup>th</sup>. She stated that there is no attendee parking at the event. All attendees are shuttled on busses provided by the City. She stated that no complaints or concerns had been received about the event.

Chairman Brookshire asked about the size of the event site. Commissioner Petis estimated that it was about the size of a football field. Ms. Debby Standefer of the Chamber described the launch site. Ms. Konopka stated that trucks deliver the balloons and equipment to the site and then park in the designated parking area. She indicated the parking area on an aerial photo of the site.

There was no public comment.

Chairman Brookshire asked what was actually being approved, and what the actual uses are. Commissioner Merrill asked about the CUP issued in 2002. Ms. Ferguson clarified that the 2002 permit was for the use of the area and water ramp for training. The permittee for those uses is the Winter Sports Club. She added that the current request is for use of the launch site for the Balloon Rodeo event, which has traditionally been processed each year as a Special Event. Chairman Brookshire asked about the vendors. Ms. Sarah Leonard, the Community Development Director for the Chamber, stated that there are usually 6 – 10 vendors at the event. She noted that the size of the launch site constrains the event to approximately 30 balloons. Ms. Leonard stated that Planning staff had requested the change from annual Special Event Permits to a CUP.

Commissioner Hebert asked about the existing CUP for the site. Mr. Phillips stated that multiple CUPs can be issued for a single property. He noted that the permittee for the training site is not the landowner, but rather the Winter Sports Club, which has nothing to do with the Balloon Rodeo. He said that the multiple uses should be considered by Planning Commission when evaluating the possible cumulative impacts. He noted that not only do Special Event Permits consume a lot of staff time, they are also generally intended for events with limited off-site impacts. The Hot Air Balloon Rodeo does have off-site impacts, and is a major event.

Regarding the uses being approved, Ms. Ferguson noted that these are listed in the project narrative. Mr. Phillips clarified that the permit includes the project narrative and site plan. The narrative describes the use of shuttles and other details not specified in the COAs.

**MOTION**

Commissioner Hebert moved to approve the CUP for the Hot Air Balloon Rodeo with the finding of fact that the proposal, with the following conditions, meets the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, and 6 of the Routt County Zoning Regulations. This approval is subject to the following conditions:

**General Conditions:**

1. The CUP is contingent upon compliance with the applicable provisions of the Routt County Zoning Regulations including but not limited to Sections 5 and 6.
2. The CUP is limited to uses and facilities presented in the approved project plan. Any additional uses or facilities must be applied for in a new or amended application.
3. Any complaints or concerns that may arise from this operation may be cause for review of the CUP, at any time, and amendment or addition of conditions, or revocation of the permit if necessary.
4. In the event that Routt County commences an action to enforce or interpret this CUP, the substantially prevailing party shall be entitled to recover its costs in such action including, without limitation, attorney fees.
5. No junk, trash, or inoperative vehicles shall be stored on the property.
6. This permit is contingent upon the acquisition of and compliance with any required federal, state and local permits. The operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to commencement of operations.
7. Fuel, flammable materials, or hazardous materials shall be kept in a safe area and shall be stored in accordance with state and local environmental requirements.
8. Prior to the issuance of the permit, the permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence. Permittee shall notify the Routt County Planning Department of any claims made against the policy. Routt County shall be named as an additional insured on the policy. Certificate of liability insurance shall include all permit numbers associated with the activity.
9. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.

Transfer of this CUP may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that they will comply with the terms and conditions of the permit. If transferee is not the landowner of the permitted area, transferee shall submit written consent for the transfer by the landowner. Failure to receive approval for the transfer shall constitute sufficient cause for revocation of the permit if the subject property is transferred. Bonds, insurance certificates or other security required in the permit shall also be filed with the Planning Director by the transferee to assure the work will be completed as specified. Any proposal to change the terms and conditions of a permit shall require a new permit.

**Specific Conditions:**

10. The CUP is valid for the life of the use provided it is acted upon within one year of approval. The CUP shall be deemed to have automatically lapsed if the uses permitted herein are discontinued for a period of one (1) year. If the event is cancelled due to wild land fire or other similar concerns, the permit's active status will continue to the following year.
11. Prior to operation, permittee shall submit to Routt County proof of a Sales Tax Account /License, if appropriate.
12. Hours of operation shall be the second or third weekend of July from 4:30 a.m. to 11 a.m.
13. Any accidents involving emergency services shall be reported to the Planning Department.

Commissioner Flint seconded the motion.

**Discussion and Friendly Amendments**

Commissioner Petis suggested that the start time listed in COA #12 should be amended to 4:30 a.m., as that is when activities at the site often commence. This amendment was accepted, as indicated above.

**The motion carried 8 – 0, with the Chair voting yes.**

**ACTIVITY: PL-18-128 & PL-18-130**  
**PETITIONER: Terry Thompson**  
**PETITION: 1) Vacation of Utility Easements**  
**2) Permit for a Waterbody Setback associated with proposed construction**  
**LOCATION: 31745 Red Stag Lane**

Mr. Caleb Simon of Steamboat Architectural Associates, representing the petitioner, stated that all sign-offs had been obtained for the vacation of the utility easement. He described the proposed garage and stated that the Board of Adjustment had granted lot line variances for the proposed setbacks. He noted that the lot is very small for the Mountain Residential Estates zone district, which requires 50' setbacks from the property lines.

Noting that a Waterbody Setback Permit for a structure is only granted if the encroachment into the required setback is unavoidable, Commission Petis asked why the corner of the proposed structure could not be cut out to meet the required setback. Mr. Simon described the proposed metal building that would be constructed on an isolated pad. He said that cutting off one corner of the structure would not be feasible and would reduce the desired square footage of the building.

Commissioner Petis asked about the stream restoration plan. Mr. Simon said that the plan had been outlined, and that the complete plan would be submitted for approval during the building permit process.

Commissioner Arel asked about the 1' setback from the property line. Mr. Simon described the building, stating that the fire separation wall without an overhang would meet the variance granted by the Board of Adjustment. Commissioner Arel suggested that the overall building length could be shortened to avoid the waterbody setback.

Commissioner Flint asked why the garage could not be moved to the west, to the edge of the cul-de-sac. Mr. Simon described the layout of the road, and stated that if the garage were moved to the edge of the cul-de-sac, it could not be accessed by the existing driveway. He added that the garage was positioned to be in line with the existing house. Mr. Simon stated that the building was positioned to minimize the sight line from the adjacent property owner's residence. Regarding unavailability, Ms. Ferguson described the topography of the lot, which includes steep slopes. She indicated that location of the drainage, the septic system, the water well and the driveway. She stated that locating the property on the south side of the drainage would require a Waterbody Setback Permit for a crossing. Regarding the suggestion that the garage could be moved to the west of the proposed location, she stated that that would be a question for the Board of Adjustment.

Commissioner Arel asked about the leach field, and whether it would need to be relocated. Mr. Simon stated that the leach field extends into the adjacent property to the north, and that an agreement is in place regarding this arrangement. He indicated the location of the leach field on a site plan. He added that the vault will have to be 5' from the proposed structure. If necessary, the vault will be relocated to the front of the building. The line from the septic tank to the leach field goes under the proposed garage site. He indicated the location of the vault and the lift station on a site plan.

In response to a question from Commissioner Hebert, Mr. Simon described the proposed use of the garage. He noted that the neighbors are in support of the proposal. Commissioner Hebert asked about the drainage. Mr. Simon stated that it is a perennial stream that runs more than 90 days per year.

Chairman Brookshire asked why this request was not processed administratively. Mr. Phillips said that because Planning Commission approval is needed for the vacation of utility easements, the two applications were combined into a single request. He added that if the Waterbody Setback Permit is not granted because Planning Commission decides that the building could be located elsewhere to avoid the encroachment into the waterbody setback, the applicant would have to go back to the Board of Adjustment for a new variance for an alternate location. Mr. Phillips noted that the regulations give preference to a waterbody setback over a property line setback. Ms. Ferguson added that the proposed location for the garage impedes less on the waterbody setback than the existing house.

### **Public Comment**

Mr. Paul Hoffmann stated that he was under the impression that the "avoidability" language had been eliminated from the Waterbody Setback Regulations. He noted that only one access to the site is permitted by County regulations, which would preclude moving the garage to the west. He stated that if the mitigation measures are followed, the waterbody will be protected, and expressed frustration that the topic of unavailability continues after the revision of the Waterbody Setback Regulations.

Seeing no further comment, Chairman Brookshire closed public comment.

Chairman Brookshire asked about the plan to prevent scarring the hillside. Mr. Simon said that reclamation and final grading would restore the hillside to its current condition following excavation. He said that measures would be taken to prevent erosion and that the hillside would be re-seeded with a native grass mix.

Chairman Brookshire asked if COA #3 should include some provision for follow-up to ensure that the reclamation is successful. Commissioner Petis cited Section 5.11.6.C of the Waterbody Setback Regulations. Commissioner Hebert said that the intent of the Waterbody Setback Regulations is to ensure that there is no degradation of waterbodies. He stated that the proposal would place the structure 37' from the drainage. He suggested that there should be a requirement that the stream quality be improved or enhanced through the restoration. Commissioner Petis stated that this is included in the previously cited regulations. Mr. Simon stated that the restoration plan would be submitted for approval at the time of building permit. Mr. Phillips stated that a sentence could be added to COA #3 that the permit would not be issued until the plan has been submitted and approved by the Planning Director.

Commissioner Marshall asked why the driveway could not be moved. Mr. Simon stated that the garage is intended for storage, not everyday use. Moving the driveway would eliminate the parking for the residence.

#### **MOTION**

Commissioner Petis moved to recommend approval of the vacation of the utility easements with the following findings of fact:

1. The proposal with the following conditions complies with the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, and 6 of the Routt County Zoning Regulations, Sections 2 of the Routt County Subdivision Regulations.
2. The proposal meets the substantive standards as provided under Colorado Revised Statutes Section 43-2-303.

This approval is subject to the following condition:

1. The resolution of vacation, which includes a legal description of the right-of-way being vacated, shall be recorded in the official records of the Routt County Clerk and Recorder within one year of the Board of County Commissioners approval.

#### **MOTION**

Commissioner Petis moved to table the request for a Waterbody Setback Permit to accommodate a garage to allow the applicant to provide additional information, as it has not been demonstrated that placing the structure outside of the 50' setback is not technically feasible. In addition, it has not been demonstrated that the encroachment of the structure has been minimized or the impact of the structure on the water quality, drainage, vegetation, habitat or other functional characteristics of the waterbody has been minimized. He stated that more information was needed to appropriately assess the need for a Waterbody Setback Permit.

Commissioner Flint seconded the motion.

**Discussion**

Commissioner Petis clarified that he does not believe that sufficient information has been provided to satisfy the requirements of Sections 5.11.6.A.1.A, 5.11.6.b or 5.11.6.C.

**The motion to table the petition failed 3 – 5, with the Chair voting no.**

**MOTION**

Commissioner Hebert moved to recommend approval of the Waterbody Setback Permit to accommodate a garage with the finding of fact that the proposal with the following conditions meets the standards of Section 5.11, Waterbody Setback Standards and Permits, of the Routt County Zoning Regulations as construction outside of the waterbody setback is not technically feasible due to the physical features and conditions of the lot. There is no place to construct the access driveway or the garage that would be outside of the 50' applicability area.

Conditions of Approval:

1. The Waterbody Setback Permit is limited to the project presented in the plans. Any changes must be applied for in a new or amended application.
2. The applicant shall obtain a Grading and Excavating permit from the Routt County Road and Bridge Department prior to commencing any work, if applicable.
3. Revegetation of disturbed areas shall occur within one growing season with a seed mix which avoids the use of aggressive non-native grasses and wetland vegetation indigenous to the area.
4. This approval is contingent upon any required federal, state and local permits being obtained and complied with; the operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to operations.
5. The approval shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation.
6. The restoration plan shall be submitted to the Planning Department for approval, per regulation 5.11.6.C prior to the issuance of the permit.

Commissioner Arel seconded the motion.

**Discussion**

Commissioner Flint stated that although he does not think the proposal will harm the drainage, he expressed concern that after all the work done to revise and support the Waterbody Setback Regulations, Planning Commission would be approving an application that seems to soften the regulations without more rigorous information that the encroachment is unavoidable.

Commissioner Arel stated that he is not concerned with precedent, as each case will be evaluated on its own merits, on a case-by-case basis. He offered that the encroachment could be avoided if two access points were allowed, but if the petitioner can produce a restoration plan acceptable to the Planning Director, the structure will not harm the waterbody.

Commissioner Petis offered that if the motion is accepted as presented, with the findings of fact that the construction is unavoidable, and technically feasible, a precedent is created that allows a structure to encroach into the setback that is in fact avoidable.

Commissioner Marshall cited the amount of time and energy spent on the Waterbody Setback Regulations to protect the waterbodies in Routt County. She stated that it is unnecessary to have a 40' x 60' garage. She said she doesn't know about the options for two driveways. Mr. Phillips stated that that would be a Road & Bridge Department decision.

Commissioner Norris agreed that Waterbody Setback Permits are evaluated on a case-by-case basis. He added that the existing home encroaches further into the setback than the proposed garage, and offered that mitigation is possible. He added that stream does not run all year.

Chairman Brookshire stated that because there is no sliding scale for different types of streams, it doesn't matter if the stream is intermittent.

Commissioner Hebert stated that it is important to look at the intent of the regulations. He said that the concern is the protection of the stream, and added that each application is evaluated independently, so no precedent is set. If the restoration/reclamation plan can demonstrate that the stream will be protected and enhanced, then the encroachment is okay. Commissioner Merrill agreed.

Commissioner Flint asked if it would be appropriate to amend the staff comments regarding unavoidability. Mr. Phillips stated that during the process of revising the Waterbody Setback Regulations, staff was directed to lighten up on its approach to "unavoidability." He cited Section 5.11.6.A.C which grants discretion if it is determined that building outside the setback would result in greater impact than permitting limited activity to occur in the setback. He said that staff evaluated the impacts of the driveway, the layout of the garage door, and the minimal setbacks from the property line against the criterion of avoidability. There was further discussion of avoidability.

Regarding the proposal to reduce the size or cut a corner off the structure, Mr. Phillips stated that the County takes the approach of accepting the building as presented and applying the criteria to it. It does not require applicants to modify their proposed structures.

Commissioner Flint stated that the word "unavoidable" should not be used if in fact the situation *is* avoidable, but has been determined to be allowable due to other factors. Mr. Phillips noted that under the regulations, avoidable encroachment is only allowed for bridges, culverts, crossings, etc. Any encroachment by a *structure* determined to be avoidable must result in a denial of the permit.

Chairman Brookshire stated that the process is like taking a sledgehammer to a gnat. He stated that the restoration plan requirement should be sufficient.

**The motion carried 5 – 3, with the Chair voting yes.**

**ACTIVITY: PL-18-132**

**PETITION:** Work session on proposed amendments to the Routt County Zoning Regulations  
**LOCATION:** County-wide

Ms. Winser stated that the proposed amendments are scheduled for adoption or another work session, if necessary, at the August 2<sup>nd</sup> meeting. Ms. Winser reviewed the handout.

**Commuter Zone definition:** She stated that with the amendment to the Secondary Dwelling Unit (SDU) regulations, the commuter zone is no longer applicable.

#### 3.4.4.B

Ms. Winser stated that the last part of the long, run-on sentence that begins with an enumeration of the types of variance requests that can be heard by the Board of Adjustment (BOA) summarizes the five criteria that must be met for a variance to be granted. The proposed amendment would separate these two issues into separate sentences, with a list of the items that the BOA can hear.

#### 3.4.6

Ms. Winser reviewed the proposal to replace "profit" with "cost of development." Mr. Phillips noted that this item had been previously tabled for more information regarding the BOA process. He reviewed the five criteria and the process used by the BOA. He noted that the staff reports for the BOA include a staff recommendation. He said that findings of fact must be provided to support whether each criterion is met. He discussed the issue of "profit" and discussed how this is often misinterpreted. He stated that a higher cost of developing in such a way that the structure will meet the zoning requirements is not a valid reason for a variance to be approved. Commissioner Brookshire suggested including both "profit" and "cost of development."

#### 4.19

Ms. Winser noted that if a land use is not listed in the use chart, it is not allowed. She stated that some applicants try to squeeze an un-listed use into a similar category. Mr. Phillips stated that short-term rentals had been added to the use chart to clarify that they are not allowed. He offered that adding fractional ownership properties would similarly clear up what might be considered a grey area in the regulations.

#### 7.3.1

Ms. Winser noted that the PUD and rezoning processes are generally done concurrently. This amendment would eliminate a seemingly redundant step. She stated that the proposal had been reviewed and approved by the County Attorney.

#### SDUs

Ms. Winser reviewed the recent changes to the SDU regulations, allowing attached SDUs on 5 acres or more, including parcels in the MRE zone district. On properties of 35 acres or more, the SDU can be detached, with a maximum separation of 300'. She stated that the intent of the maximum separation was to preserve the compound or clustered character of traditional development in the County.

#### 5.3.C

Ms. Winser stated that the issue is whether it is appropriate to allow the SDU to be attached to an accessory structure (garage, etc.) on parcels of less than 35 acres. She noted that some may want to subvert the intent by building a carport just to have an SDU that is not attached to the primary structure. She offered several options, such as limiting the type of structure by only allowing qualifying structures to be eligible or allowing an SDU only on previously existing accessory structures of a certain age. Commissioner Petis asked if the proposed change was to address a problem. Mr. Phillips noted that allowing SDUs to be attached to accessory structures would further relax the regulations that have already been relaxed. He offered that the question is whether it matters if an SDU is attached or detached as long as it is within the 300' maximum separation from the primary dwelling.

Commissioner Marshall offered that the 5-year age limit doesn't make any sense, and offered that it shouldn't matter if an SDU is attached to the barn or to the primary structure. Mr. Phillips offered that if that is the case, there is no reason to require attachment at all. Chairman Brookshire suggested that an alternative would be to reduce the maximum separation to ensure tighter clustering and avoid further sprawl. Commission Flint agreed that clustering was important, but that requiring that the SDU be attached only to the primary dwelling was not. Commissioner Norris stated that a lot of consideration was given to 300' separation. This is the length of a football field. Chairman Brookshire noted that under current regulations the County is allowing a lot more SDUs, and this would create that much more sprawl in the County. Commissioner Norris cited the letter from the Colorado Division of Water Resources regarding wells. He stated his support for limiting detached SDUs and reducing the separation. There was further discussion of allowing detached SDUs on parcels of 5 acres or larger with a reduced maximum separation, particularly on smaller parcels. Chairman Brookshire noted that the restrictions on wells may limit the number of units, whether the regulations are relaxed or not.

### 5.3

Ms. Winser said that this discussion item concerns the possibility of allowing SDUs in all residential zone districts provided the lot is served by central water and sewer. She reviewed the data on the number of additional lots that would be eligible for SDUs under this change. If the areas in Stagecoach and Steamboat Lake are removed from consideration, 606 lots would be newly eligible. However, this number does not take into consideration the areas where SDUs may be prohibited by HOAs. Mr. Phillips added that many of these lots may actually be large enough to qualify for a duplex under the current zoning. He stated that this option is being considered in response to the letter submitted by Erin Light of the Division of Water Resources.

### Public Comment

Mr. Jim Kohler, president of the Tree Haus Metro District, stated that there are currently 120 houses in Tree Haus and that the water and sewer district cannot support 240. He said that the Metro District is currently working on developing an augmentation plan. He said that Metro District guidelines prohibit SDUs. He said that he would like to see Tree Haus struck from consideration of SDUs. Mr. Kohler added that vacation rentals need to be part of the discussion. He said that although vacation rentals are prohibited in the County, six of the seven houses that surround his property are rented out on a short-term basis. He estimated that at least 20-25% of Tree Haus properties are listed as vacation rentals online. Mr. Kohler said that the Metro District does not have the authority to charge a premium for this use, even though it increases usage. He suggested that expanding SDUs will increase the number of units being used as short-term rentals, drastically

increasing the demand on water and sewer. He cited one home on River Road that contains three or four units.

In response to a question from Ms. Winser, Mr. Kohler said he was uncertain if the HOA covenants for Tree Haus prohibit SDUs or not. He said that the Metro District will not sign-off on applications for SDUs, but added that they are often only caught when they are advertised when a property goes on the market. Mr. Phillips said that it would be difficult to exclude Tree Haus from changes to the regulations because the regulations are based on specific zone districts. Regarding short-term rentals, he recommended that those concerned file a complaint with the Planning Department, which will then follow-up on the situation and enforce the regulations. He said that the majority of those contacted comply.

Mr. Paul Hoffmann suggested that the Metro District, rather than an individual, could also file a complaint with the County. Regarding the proposed changes to the regulations that apply to the BOA, Mr. Hoffmann stated that the word "profit" is there to address commercial properties. He said that personal convenience and special privilege could apply to either a residential or commercial property. He said that discussing the cost of development is appropriate. He said that he did not think that there is a problem with the word "profit." He said the process is working fairly well and doesn't need to be fixed.

Regarding fractional ownership, Mr. Hoffmann stated that multiple owners do not change the use of a property. He asked how ownership is a use. Mr. Phillips said that nothing new would be enforced or changed in the regulations. The proposed addition to the use chart would clarify the existing prohibition of fractional ownership properties. Chairman Brookshire said that properties may be owned by multiple parties, either as joint tenants or tenants in common, but splitting up a property such that different parties have use of it at different time periods is not allowed. He said that this would be a type of illegal subdivision. Mr. Phillips added that under the County's definition of subdivision (Chapter 2, Section 170), which is based on state statute, fractional ownership would constitute divided separate interest.

Mr. Hoffmann stated that when discussing the maximum separation of 300' between primary and detached secondary units, there is not a lot of space beyond that in some MRE lots. By allowing SDUs to be attached to an existing accessory structure, the number of structures would be minimized. He suggested limited the total number of structures allowed on a parcel of a certain size. Mr. Hoffmann stated that the County should not regulate to protect against the 2% of people that will try to stretch the rules beyond reason.

Commissioner Marshall stated her support for allowing SDUs in accessory structures if there is central water and sewer, and maintaining the 300' maximum separation. She stated her opposition to requiring the accessory structure to be in existence for a set amount of time.

Commissioner Hebert offered that what is being proposed is similar to what is allowed in the City. He offered that this approach is appropriate for urban-like areas near to town. Ms. Winser offered that the 600 units cited earlier would fit this definition. She added that the units in Tree Haus should be subtracted from this number. Chairman Brookshire suggested that all of Steamboat Lake and the south side of Stagecoach should not be considered. He also expressed reservations with Blackhorse and Meadow Green, citing traffic. Ms. Winser stated that the total of 600 lots cited

earlier had already eliminated south Stagecoach and Steamboat Lake. Mr. Phillips said that for the next work session, the number of the lots that would already be eligible for duplexes can be determined.

Returning to the proposed change to Section 3.4.6. (BOA), it was noted that the confusion regarding cost of development arises when an applicant argues that cost of development constitutes a hardship under the regulations. In order to clarify the regulations, Planning Commission agreed that "cost of development" should be added to personal convenience, special privilege and profit as reasons that cannot be used as the sole reason for granting a variance.

To summarize, Planning Commission agreed that the following items could be scheduled for adoption on August 2nd:

3.4.4. – separate into two sentences

3.4.6. – retain "profit" and add "cost of development" with a disjunctive (an "or")

4.19 – add fractional ownerships to the use chart (as disallowed).

7.3.1. – eliminate the zone change from the PUD process

More discussion will be held on potential modifications to the SDU regulations.

#### **ADMINISTRATOR'S REPORT**

Mr. Phillips reviewed the upcoming Planning Commission agendas. The July 19<sup>th</sup> meeting has been cancelled. Mr. Phillips stated that the Board had not made any decisions regarding Planning Commission recommendations since the last Planning Commission meeting.

**The meeting was adjourned at 9:45 p.m.**