

## ROUTT COUNTY PLANNING COMMISSION

### FINAL MINUTES

**FEBRUARY 15 , 2018**

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

#### **PUBLIC COMMENT**

There was no public comment.

#### **MINUTES - January 18, 2018**

Commissioner Norris moved to approve the minutes of the January 18, 2018 Routt County Planning Commission meeting, as written. Commissioner Merrill seconded the motion. **The motion carried 6 - 0.**

#### **ACTIVITY: PL-18-100**

**PETITIONER: Routt County Communications**

**PETITION: Proposal to replace an existing communications tower**

**LOCATION: Emerald Mountain**

Mr. Jason Nettles, Routt County Communications Director, stated that the staff report described the project well. He said he would be available to answer questions.

Mr. Goldich reviewed the petition to replace an existing communications tower on Emerald Mountain that is on property owned by YVEA. The existing tower is 30' tall with a 20' antenna on top. The new tower will be 100'. He described the associated equipment that would be located at the tower's base, including a pre-fabricated equipment shelter, a generator and a fuel tank. The site will be surrounded by an 8' chain link fence and will be accessed via Blackmere Drive. Once the construction is complete, the traffic needed to service the tower will be minimal. Mr. Goldich presented photos of similar towers, noting that a monopole would not be feasible due to the amount of equipment the tower needs to support. The tower will be utilized by YVEA, Routt County Communications, the City of Steamboat Springs, law enforcement, fire and EMS. The applicant has agreed to all of the suggested conditions of approval.

Chairman Warnke asked if visual mitigation made sense, given the distance of the site to residential areas and the presence of other towers on Emerald

Mountain. Mr. Goldich said the tower would be visible from many parts of town. Mr. Nettles said that the equipment shelter would be brown.

Commissioner Arel asked if the existing pad would be re-used. Mr. Nettles said that it would not, as the new tower would require a larger (100' x 100') pad. Mr. Goldich said that a Grading and Excavation Permit may or may not be required. In response to a question regarding the timeframe for construction, Mr. Nettles said that they are aiming for completion by the end of August 2018.

Commissioner Brookshire asked if the trail (Blackmere Drive) would have to be closed during construction. Mr. Nettles said that a trail closure of a few hours would be needed during the transport of materials to the site. The closure would be coordinated with the City, which is paying for the project.

Mr. Arel asked if cellular companies would be allowed to co-locate equipment on the tower. Mr. Nettles said that due to deed restrictions on the property, no commercial entities would be allowed to use the site. Use will be restricted to public safety and YVEA. Mr. Nettles said that he was okay with leaving suggested Condition #15 in place.

There was no public comment.

Commissioner Brookshire asked what would happen to the existing tower and equipment. Mr. Nettles reviewed the plan to employ temporary infrastructure during the transition. The new building will be constructed and the old building will be demolished. The new tower will be put up right next to the existing tower, which will then be removed. The entire process should take about 8 weeks. Mr. Nettles added that due to the potential loss of communications in the Steamboat Springs area, it is imperative that the project be completed this summer.

Commissioner Brookshire asked about bonding. Mr. Goldich said that staff had discussed this with the County Attorney. Because the County is self-insured in excess of the minimum amounts, it is staff's opinion that the intent of the regulations is being upheld. The standard condition regarding bonding was not included at the request of the County Attorney.

## **MOTION**

Commissioner Arel moved to approve the Conditional Use Permit for a communications tower 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 8.10 of the Routt County Zoning Regulations.
2. Finding that the permit holder is self-insured with coverage in excess of minimum amounts, thus, the intent of the regulations is being upheld. Therefore COA No. 9 and No. 17 is either satisfied or can be removed.

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, 6, and 8.10.
2. The CUP is limited to the 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 approval 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 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. All maintenance, security, or exterior lighting shall be downcast and opaquely shielded.
9. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.
10. 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 of 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.
11. The Permittee shall prevent the spread of weeds to surrounding lands, and comply with the Colorado Noxious Weed Act as amended in 2013 and Routt County noxious weed management plan.

**Specific Conditions:**

12. 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.
13. The construction and use of a telecommunication facility shall not cause interference to other adjacent telecommunication facilities. The County shall be held harmless if interference occurs.
14. If tower lighting is required by the FAA, the operator shall use only white (preferably) or red strobe lights at the minimum intensity, minimum number of flashes per minute, and minimum number of lights allowed by the FAA.
15. In order to limit the construction or proliferation of cellular tower sites in the area, the operator shall agree to allow co-location of other users on the tower, providing their requested use is compatible with the existing use.
16. The telecommunication equipment shall be painted a color compatible with the existing character of the site and surrounding properties.
17. A Routt County Building Permit must be obtained for the tower.
18. Prior to the issuance of a Certificate of Approval, the permittee shall provide the Planning Department with as-built drawings of the tower and facilities.
19. Permittee shall construct the proposed driveway and access in accordance with Road & Bridge standards and obtain associated permits, if required.
20. There shall be adequate space at the site to allow for access, turn around and parking for emergency vehicles.
21. To reduce behavioral effects to big game and Columbine Sharp-Tailed Grouse that may occupy the project area either seasonally or year-round, CPW recommends all construction related activities associated with this project occur outside the time period from December 1 through April 15.
22. Anti-perching devices shall be installed along antennae frames, horizontal cross arms, and any other vantage point used by raptors for predation.
23. The applicant is responsible for identifying if any of the weed species on either the 13 Noxious Weeds of Routt County list, or the Noxious Weeds of Colorado List A, B or C are present on the site. If present, the applicant shall submit a plan for controlling the weeds to the Routt County Weed Program or contact the Routt County Weed Program for assistance in developing a weed management plan, if required.
24. Revegetation of disturbed areas shall occur within one growing season with a seed mix which avoids the use of aggressive grasses. See the Colorado State University Extension Office for appropriate grass seed mixes.

25. The existing tower that this one is meant to replace shall be removed and the site re-vegetated within one year of the new tower going on-line.

Commissioner Norris seconded the motion.

**The motion carried 6 - 0, with the Chair voting yes.**

**ACTIVITY: PL-16-70**

**PETITIONER: Routt County**

**PETITION: Worksession on amendments to the Waterbody Setback Regulations**

**LOCATION: County-wide**

Mr. Goldich stated that the draft regulations presented in the memo reflect the input to-date provided by Planning Commission, the Board of County Commissioners (Board), Colorado Parks and Wildlife (CPW), and County staff. He stated that under the current draft, staff would not deny a permit for a waterbody crossing, provided the acceptable mitigation measures were proposed.

Mr. Goldich reviewed the substantial changes that had been made since that last draft, including the change to the definition of a waterbody to one that holds water continuously for 90 days, instead of 60 days, per direction from the Board. Mr. Goldich reviewed the change to qualifications needed for someone to determine the Ordinary High Water Mark (OHWM). He stated that the agriculture exemption for grading and excavation permits was changed to be consistent with that included in the building code. Regarding the Impacts Deemed Avoidable, Mr. Goldich stated that CPW had discussed the idea of a variance type process, but that staff had determined that a better process would involve review by Planning Commission and the Board. This draft states that if an activity is deemed avoidable, the application would go through the same review process as an SUP. Mr. Goldich reviewed the 'NEPA-style' narrative suggested by CPW. He said that this narrative was included in the current draft as a requirement. He added that CPW had stressed the importance of monitoring mitigation measures to ensure that they are maintained and are working as intended. Under the current draft, a monitoring plan must be submitted as part of the permit process. In response to a question from Commissioner Arel, Mr. Goldich said that the permittee would be responsible for monitoring. Mr. Phillips added that staff could also conduct periodic inspections and follow-up.

Mr. Goldich noted the comments and questions submitted by Commissioner Brookshire. The following is a summary of the discussion concerning those comments.

**5.11.3.A:** The discussion revolved around the need for a certification, and what would occur in the event of disagreements between staff and a qualified professional regarding a determination of the OHWM. Mr. Phillips clarified that

the determination generally takes the form as a staked line on the ground, not a document. The word “determination” should replace “certification.” Mr. Goldich added that a site plan usually triggers the need for a determination. Mr. Phillips suggested adding a new sentence reserving the right of the County to accept or reject the consultant’s determination. The standard appeal process would apply to the determination.

**5.11.4:** The discussion concerned the inconsistency in referring to fences as structures. It was decided that the conflict could be resolved by amending the language to refer to “fences and other agricultural improvements.” Regarding waterbodies located on state lands, Mr. Goldich confirmed that the regulations would apply.

Regarding further review of exemptions, Commissioner Brookshire offered that the items included in his comments were for discussion purposes.

**5.11.6.A.2:** Mr. Goldich clarified that the item does not relate to structures, but rather only to crossings: culverts, bridges, roads, driveways, etc. Regarding 5.11.6.A.2.a, Mr. Goldich stated that CPW will advise regarding appropriate mitigation, but that CPW does not want to be involved in making decisions regarding approval or denial of permits.

Commissioner Brookshire reviewed the steps that would be required to obtain a permit for a waterbody crossing, noting the high cost involved. Mr. Phillips clarified that these steps would only apply to crossings deemed avoidable. He reviewed the objectives (5.11.1) that are the basis for the regulations. Commissioner Brookshire noted that in order to avoid the installation of a culvert, a landowner might be required to build a lengthy road. He said he did not know how to account for the economics or feasibility in determining avoidability.

Commissioner Brookshire stated that his concerns do not involve the Yampa, the Elk, or their major tributaries; they are limited to the small intermittent streams in remote areas that could be crossed easily with the installation of a 12” - 24” culvert. He added that he is also in support of strict setback requirements for structures. He said, however, that having to go through all the previously listed steps and pay the associated costs in order to install a culvert to access a building site was wrong. Mr. Phillips stated that these steps would only apply to avoidable crossings. If the crossing is unavoidable because the house cannot be constructed in an area that does not require a crossing, none of this applies. Commissioner Brookshire expressed concern that people could purchase a lot without knowing all they would have to do in order to build on their desired site. He offered that people would choose to install the culvert without a permit.

Mr. Phillips noted that staff had received several questions from the public regarding how the existing 60-day definition had been changed to a 90-day definition in the current draft. He stated that this change was made at the direction of the Board. He added that an earlier version had included a sliding

scale of setbacks depending on the size of the stream. When the sliding scale was eliminated, the Board recommended changing the definition to 90-days of continuous flow to remove from consideration the small drainages mentioned by Commissioner Brookshire.

### **Public Comment**

Routt County Environmental Health Director Scott Cowman stated the importance of looking at the unintended consequences and cumulative impacts of waterbody crossings on the larger watershed. He stated that if you look at one individual situation, it may seem inconsequential, but multiple crossings considered cumulatively across a watershed have significant impacts. He cited EPA documents that scientifically demonstrate the importance of the small drainages to the health of the overall stream system. He urged Planning Commission to rely on the science, and offered that with more and more people coming to the area, the small drainages need more rather than less protection. Mr. Cowman stated his opposition to increasing the number of days that defines a waterbody from 60 to 90, adding that either one is arbitrary. He said that he would prefer a definition based on stream characteristics, vegetation and channel types, which would be much more accurate than a certain number of days. Regardless of the definition, he stated that the County should be looking at the cumulative impacts across the entire watershed.

Mr. Jay Gallagher stated his support for Mr. Cowman's comments regarding the need for a characteristic-based definition of a waterbody. He stated that the upper reaches of the stream systems are laced with intermittent tributaries that have a significant impact on the major streams and rivers below and provide a real function within the watershed. He stated his agreement with Mr. Cowman and Ms. Lyn Halliday regarding the cumulative impacts of seemingly minor activities. Mr. Gallagher asked what hardship the proposed revisions to the regulations were intended to relieve. He said that the proposed revisions are simply a relaxation of the regulations that protect the County's water. He offered that the proposed changes are purely arbitrary, and open up to potential negative impacts an integral part of the stream system that serves a real function. Mr. Gallagher offered that the agricultural exemption provides sufficient relaxation, and that no more is needed. He urged the County not to increase the number of days in the definition and not to relax the regulations.

In response to a question from Commissioner Arel, Mr. Gallagher stated that a characteristic-based definition would be more accurate, but would be harder to administer. He offered that even if you define a waterbody according to a number of days, there should be some evidence to support that definition. He noted that even dry arroyos that flash during certain storm events can carry a lot of debris and should also be protected.

Commissioner Brookshire asked if there was baseline data regarding water quality specific to this area. Mr. Gallagher and Mr. Cowman reviewed the data that exists and the current efforts to build a baseline regarding water quality and

quantity. Mr. Cowman said that it is well documented that sediment and turbidity are among the biggest concerns. Commissioner Brookshire raised the issue of tubers on the Yampa, past activities in the river by landowners and the disturbances that are created in the effort to save existing bridges when streambeds change. Mr. Gallagher stated that the regulations are intended to prevent many of these activities, but noted that agricultural activities are exempt. Mr. Cowman offered that the regulations are intended to control what the County can control, and that just because agricultural activities are exempt, that is no reason to let everything else go.

Commissioner Brookshire asked how anyone knows that cumulative impacts of multiple crossings cause degradation to water quality. Mr. Cowman cited EPA studies that include Colorado and other areas with the same watershed characteristics as are present in this area and that address very practical applications. Mr. Gallagher stated that regulations should be driven by policy, and cited the objectives. He agreed with the need for baseline data, and reiterated that local studies are underway. He reviewed how bank degradation causes a degradation in water quality and quantity.

Mr. Cowman added that it is well documented that water quality has changed, and that temperatures have risen and that the nutrient levels have gone up in the Yampa River. He added that if they rise to certain level, the City will be required to take very expensive measures to reduce the temperature of wastewater entering the river.

Mr. Bill Atkinson, an aquatic biologist for CPW, reviewed his background and experience. He stated his support for the comments made by Mr. Gallagher and Mr. Cowman regarding the importance of cumulative impacts on stream function. He said that impaired stream function, usually caused by sediment, creates significant impacts on water quality and quantity throughout the stream system. He cited significant impacts on the lower Elk and Yampa due to widening channels and excess sedimentation. Mr. Atkinson confirmed the importance of the small tributaries, and stated that multiple culverts along a stream can cause scouring below, the creation of head cuts and other damage. He described the function of the spring-fed tributaries and noted the measurable decrease in downstream flows and increase in nutrient levels in the Yampa. He emphasized the importance of looking at cumulative impacts over time. Mr. Atkinson discussed the importance of floodplains in diffusing energy and stated that Steamboat (downtown) acts as a canyon that causes evulsions and has demonstrable effects downstream. He stated that it is impossible to separate out the Yampa and the Elk from the overall basin, which functions as a whole. He stated that the variance approach to the regulations would allow for assessing the potential downstream impacts of crossings. Mr. Atkinson urged Planning Commission not to increase the number of days that defines a waterbody to 90. He said that if the definition must be based on a number of days, it should be no more than 60, but that it would be better to assess each avoidable impact on a

case by case basis. He also stated that the dry basins that may only flow during storm events also serve an important function in the watershed.

Chairman Warnke asked if there were some type of criteria that could be used in addition to, or in lieu of the 60-day based definition. Mr. Atkinson stated that vegetation and channel morphology could be used to identify healthy stream channels. He stated that impairments to the functionality of the stream will be revealed in the banks of even the smallest streams.

Chairman Warnke asked if the impacts of stream crossings could be mitigated. Mr. Atkinson said that a single culvert could be designed to accommodate healthy stream flows, but reiterated that the cumulative impacts of multiple culverts along a stream are the real problem. He said that a variance-based approach would allow for case-by-case assessment.

Mr. Atkinson discussed several examples of activities in the river that have caused significant impacts to the river and its fisheries, but said that stewardship can be pro-active. He suggested that if a landowner comes in with a proposal for a crossing, it could be reviewed and alternatives could be developed to minimize the negative impacts.

Commissioner Brookshire stated that landowners do not actively want to damage the stream, and noted the cost associated with the steps proposed to obtain a waterbody crossing. Chairman Warnke stated that allowing those steps and even the possibility of mitigation for an avoidable crossing is in itself a relaxation of the existing regulations under which an avoidable crossing is simply not allowed: either the criteria are met or a permit is not issued. Chairman Brookshire stated that he is fine with insisting on the 50' setback for structures and for the Yampa and the Elk, but continues to struggle with not allowing landowners to cross small streams on their own property.

Commissioner Petis asked if there were any examples of other communities' regulations. Mr. Phillips stated that early in the process Mr. Goldich had provided a survey of the wide variety of the approaches taken by different communities. Chairman Warnke noted that there was little consistency in the regulations used by different communities. He added that Planning Commission had concluded that the existing regulations have been working well for Routt County, adding that there had only been two problematic cases since the regulations were adopted. Both of those cases involved extensive mitigations and stream improvements in conjunction with avoidable crossings. Due to the absolute definition of avoidability, staff was not allowed to consider the mitigations. Commissioner Arel agreed that the proposed regulations address Commissioner Brookshire's concern because an avoidable crossing with minimal impacts and appropriate mitigation would get a permit, whereas under the existing regulations it would not.

Commissioner Brookshire asked what would happen if a crossing were allowed under the agricultural exemption and then a new owner purchases the property

and wants to use the crossing for purposes that are non-agricultural. Mr. Phillips stated that this scenario had not come up. Mr. Atkinson stated that the issue is not exclusively about the construction process, but about the function of the river once the crossing is in place. He noted that many working ranches are being purchased by non-ranchers who lease out the land. He suggested that these new owners could afford to pay for the monitoring of the impacts on the river caused by the structures. Mr. Atkinson said that the idea is to consider the future and look toward the impacts on the river system caused by the transition from working ranches to hobby ranches with multiple outbuildings and crossings. Mr. Phillips offered that if a landowner wanted to build a non-agricultural structure such that the use of the crossing would change, the impacts of that proposed change in use of the crossing would have to be determined under Section 5.11.6.2.C of the existing regulations.

Mr. Bob Woodmansee reviewed his credentials in eco-system science and range management, noting that he had also been a farmer for many years and understands private property rights. He stated that although he understands that Planning Commission primarily deals with issues of individual property owners, we are at the point where we must look at what whole systems mean. He reviewed the definition of a "system" and applied it to a river system, which is made up of many parts of the basin - including the small intermittent streams and dry tributaries - that all function together. Mr. Woodmansee stated that the rivers are a common pooled resource utilized by all. He said that all stakeholders in the system have rights to a healthy functioning river system. He offered that the issue is writing a development code that respects and balances the rights of all stakeholders with those of individual landowners. Mr. Woodmansee offered that no compromise is really possible. He said that no single definition based on days of continuous flow make sense. Such a definition is arbitrary, but the function of each stretch of river can be defined by its individual characteristics. It is not a mysterious process. Mr. Woodmansee said that decisions regarding what is allowed should be based on the function of the waterbody within the larger stream system. He proposed that going forward a community visioning process similar to that which was used in creating the Master Plan or Vision 2030 should be undertaken to decide what constitutes the river system the community of stakeholders wants in the future. In the interim, the existing regulations could be kept in place as a "do no harm" measure.

Commissioner Arel offered that such a process would still require some compromise between the commercial/property owner/real estate interests and the science based recommendations. He suggested that the consensus might not be science-based. Mr. Woodmansee stated that we are not doing our job for the future without looking at the bigger processes that have been settled by the science. The science needs to be transmitted through policy to regulations.

Chairman Warnke stated that the visioning process would take years, and acknowledged that the definitions are arbitrary. He asked what Mr. Woodmansee

would recommend for dealing with the issue at this time. Mr. Woodmansee stated his strong support for a case-by-case professional review process.

Mr. Paul Hoffmann offered that the problem concerns the definition of “avoidable.” He suggested that the intent of the proposed revisions was not to allow anyone with an avoidable situation a path to obtain a permit regardless of the circumstances. He offered that the problem is that the definition of “avoidable” was so strict that no one was able to obtain a permit, even if the proposal was totally reasonable. He stated that the issue is figuring out what is reasonably avoidable vs. what was avoidable, but only through unreasonable measures. If the alternative to avoiding the crossing is unreasonable, then the permit should be issued. Mr. Hoffmann stated that the problem is determining what is reasonable and what is not. He said that he does not think the proposed section 5.11.6.A.2 really solves the problem. He noted that anything is avoidable if you have unlimited time and money. Mr. Hoffmann suggested that the purpose is to limit development and its associated negative impacts while allowing people to do what’s reasonable when development within the setback cannot be reasonably avoided. He stated that “reasonable” is a standard used in regulations frequently, and that it should be up to Planning Commission or the Planning Director to determine what is reasonable.

Hearing no further comment, Chairman Warnke closed public comment.

Mr. Phillips acknowledged that avoidability has been very strictly interpreted by staff, and cited the objectives of the Waterbody Setback Regulations that have been reaffirmed by Planning Commission and the Board of County Commissioners again and again. He also noted that there has never been an appeal of an administrative decision regarding a Waterbody Setback Permit. Mr. Phillips added that with the direction from the Board, staff could adjust or soften how avoidability is determined without any changes whatsoever to the existing regulations. He noted that everything contained in the current draft of the regulations came from Planning Commission and the Board of County Commissioners. He reviewed that this revision was undertaken because staff did not have the flexibility to consider mitigations in the Windwalker proposal, which was completely avoidable. He stated that under the proposed changes, a case such as Windwalker would be kicked up to Planning Commission once a determination of avoidability was made. Through the public process a decision would then be made regarding whether the mitigation measures were appropriate and sufficient to offset the impacts. Mr. Goldich reviewed proposed Section 5.11.6.A.2.

Chairman Warnke stated that unless directed otherwise by the Board, Mr. Phillips and staff would continue to interpret avoidability strictly. Commissioner Arel stated that the existing regulations have been working and that there is really no reason to change them. He added that there may be a better definition than the arbitrary 60 days of continuous flow, but that there must be some workable

definition. He said that if an arbitrary definition is going to be used, he would like to keep it at 60 days rather than 90.

Mr. Phillips stated that staff would like feedback on the issues of the definition of a waterbody and the preferred process for activities deemed avoidable.

### **Roundtable Discussion**

Commissioner Arel stated his preference for 60 days, unless other criteria can be easily defined. He agreed that proposals for activities deemed avoidable should be reviewed by Planning Commission and the Board.

Commissioner Brookshire stated that the definition should be narrowed to 90 days of continuous flow. He offered that everyone agrees with the objectives, and although property rights might be debatable when it comes to water, some regulations and definitions are needed. He said that he supports providing an option for people to ask permission for a crossing, particularly of a small stream.

Commissioner Merrill noted that all of the experts in river science who spoke agreed that the definition should not be narrowed. He stated his support for leaving the definition at 60 days. Regarding the avoidability, Commissioner Merrill offered that mitigation and a schedule for monitoring deserve to be treated separately in the regulations. He added that there should be clarification regarding who is responsible for monitoring. Mr. Phillips stated that the mitigation varies significantly from case to case. He said that he had envisioned a process through which staff would work with CPW to establish a template for conditions regarding monitoring.

Commissioner Norris stated his preference for 90 days in order to monitor what is going on with each stream. He discussed the beaver-created activities in the stream in his backyard and the impacts of irrigation and livestock. He also stated that the 'avoidable' language is appropriate.

Commissioner Petis cited several sections of the Master Plan, noting the tension that exists in the document between respect for private property owners' rights and the need to protect the environment for all. Specifically, he quoted from Chapter 1.2 and Chapter 5. He offered that the propensity of the guidance points toward protecting the environment and the interests of the community as a whole. Commissioner Petis stated that the lack of significant complaints indicates that the County had found a good balance in the existing Waterbody Setback Regulations. He noted that although CPW would prefer a characteristic-based definition, it seems that they could live the 60-days of flow definition. He stated his support for retaining the 60-day definition. He recommended strongly against formulating regulations that refer to what is "reasonable." Commissioner Petis stated that the proposal to allow mitigation for crossings that are avoidable does allow landowners to develop crossings that are convenient for them, even if it is expensive.

Chairman Warnke stated that he knows that the proposed change from 60 to 90 days came from the Board of County Commissioners, but does not know what prompted it or what the logic is behind it. He stated that there seems to be strong consensus among those most familiar with the environmental issues at stake to retain the 60-day definition. He stated that he supports the 60-day definition. Chairman Warnke said that the proposed language seems good for now, but that it remains a work in progress, and may well change as more data becomes available. He said that the proposed draft accomplishes what it set out to accomplish in allowing for consideration of mitigation.

Mr. Phillips said that Planning Commission will have an opportunity to review the final draft of the revised Waterbody Setback Regulations on April 5<sup>th</sup> and, if it is comfortable with the draft at that time, make a recommendation to the Board.

**ACTIVITY: PL-18-101**

**PETITIONER: Routt County**

**PETITION: Worksession on amendments to the Zoning and Subdivision Regulations**

**LOCATION: County-wide**

Mr. Goldich reviewed the proposed housekeeping amendments included in the memo dated February 15, 2018, skipping over those that involve typos, etc.

**Section 2, Structure:** Mr. Phillips noted that the definition of structures was amended to include shipping containers.

**Section 3.4.4 :** Mr. Goldich stated that the minimum lot area has been addressed at the administrative level for years.

**Section 3.4.6:** Mr. Goldich stated that the word “profit” is often a stumbling block for the BOA. He stated that staff sees this as referring to the cost of development rather than as commercial enterprise. The BOA is not allowed to consider how much it will cost to abide by the regulations. Commissioner Brookshire suggested adding “cost of development” but leaving “profit” in as well. He offered that an encroachment into the setback could increase the value of a property, creating a profit for the seller. Commissioner Petis stated that the meaning of “profit” needs to be clarified, taking the recent Manley case (downtown Steamboat) into account. Following discussion, it was determined that this item should be put on hold pending an opinion from the County Attorney.

**Section 3.2.1:** Mr. Phillips stated that the Board considers un-platted rights-of-way as budgetary rather than land use issues, and therefore should be handled administratively. He noted that there are statutory criteria for the vacation of platted rights-of-way, which would not be affected by this change.

**Section 5.10.1.B:** Mr. Goldich stated that the road classification system has been changed and some categories have been eliminated. He stated that the map will

now be used exclusively to determine which roads are to be used in skyline development decisions.

**Section 2.9.2 & 2.10.2A:** Mr. Goldich stated that there are many requests for adjustments to building envelopes, most of which were arbitrarily defined in the first place. He noted that these changes take a great deal of staff time. He reviewed the proposal to move to language of “no build zones.” He reviewed what constitutes a hazardous condition. Mr. Phillips added that if a developer wants to designate building envelopes in order to protect views, for example, this can be accomplished through covenants. Commissioner Petis recommended adding “new” before “plats” in 2.9.2, 2.20.2.A and 2.15.1. Commissioner Brookshire suggested that “subject to flooding” was arbitrary, and asked why FEMA maps were not cited. Mr. Goldich said that not all areas are mapped, but that aerial photography from flood years are used for reference.

**Section 4.2.G:** Mr. Goldich stated that Final Subdivisions are approved administratively. All required improvements are determined at the Preliminary stage.

**Section 4.1.A:** Mr. Goldich stated that the change will include improvements to existing infrastructure. He reviewed an example that could have been easily addressed if this language had been in the regulations.

**Miscellaneous, Appendices A & B:** Mr. Goldich reviewed the memo. There were no questions.

Mr. Goldich stated that Planning Commission will review and make a recommendation regarding these changes on April 5<sup>th</sup>. Mr. Phillips stated that he would meet with the County Attorney prior to that date regarding the change in language to Section 3.4.6.

### **Public Comment**

Mr. Paul Hoffmann stated that he would like to review the ruling in the Manley case regarding “profit.” He agreed that “profit” does generally refer to commercial enterprise. He stated that staff’s interpretation of the statutory language is that no consideration can be given to cost, whereas the language of the statute emphasizes that the reason for the variance cannot be based solely on convenience, profit or special privilege. He stated that variances should not be granted just because it would be more convenient for someone, or because a variance would be needed in order to make the development financially profitable. Mr. Hoffmann said that the point is not increasing the value of the property. He said the cost of something should be able to be considered, it just should not be the only consideration. He stated that reasonableness must be considered. People should be able to do what they want provided there is no harm to others. Mr. Hoffmann suggested that the word “profit” should be retained, but should be better defined to emphasize commercial enterprise and not cost.

Mr. Phillips stated that the proposed change is intended to provide clarity, not to change the meaning. He stated that the issue usually comes up with existing structures that would be very expensive to bring into conformance with the regulations. He said that the cost of correcting a violation cannot be considered because it would encourage people to come in after the fact and ask for forgiveness instead of abiding by the regulations. In response to the comment from Mr. Hoffmann stating that a variance can only be granted if the problem was not the fault of the applicant, Mr. Phillips said that he had asked the Board if subsequent owners should be held to the same standard. The Board confirmed that there should not be a relaxation of the regulations because the structure has existed for 'x' number of years and that the regulations should continue to apply. He stated that the change is intended as a clarification that the issue is the Zoning Regulations, not the cost.

Commissioner Petis asked about the definition hazardous conditions, which are not defined in Section 2. Mr. Phillips stated that these are discussed in Chapter 3 - Development Constraints.

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

Mr. Phillips reviewed recent decisions by the Board of County Commissioners, including an approval of a lot consolidation.

There will be no meetings in March, as the deadline for submittals has passed. Mr. Phillips reviewed the agendas for April.

**The meeting was adjourned at 9:40 p.m.**