

# Joint Meeting of the Planning Commission, Board of County Commissioner and Board of Zoning Adjustment

September 7, 2010  
Custer County Courthouse  
Westcliffe, Colorado

## Present:

Board of County Commissioners: Lynn Attebery Chairman, Jim Austin Vice Chairman and Carole Custer Commissioner

Planning Commission: Vic Barnes, Keith Hood, Pat Bailey, Rod Coker, Bill Donley Paul Buckles

Board of Zoning Adjustment: Gerry Dearborn, Skip Northcross  
Dee Hoag, Ken Patterson and Dave Tonsing

Associate Members: Brad Stam, Dale Mullen, Ken Lankford and Dorothy Nepa

Staff: Jackie Hobby and Chuck Ippolito

Absent:

County Attorney John Naylor

Absent: Sherry Rorick, Keith Hood, Pat Bailey, Roger Camper and  
Cindy Howard

The meeting was called to order at 1:05 P.M. by SKIP NORTHCROSS, Board of Zoning Adjustment Chairman.

Pledge:

NORTHCROSS: Welcome. This is a joint meeting of the Board of Zoning Adjustment, the Planning Commission and the Board of County Commissioners. The difference between the Boards is that they are all volunteers and they deal with land issues. The BZA has set guidelines and follow State Statues and deal with the Zoning Regulations. The Planning Commission is an advisory Board and makes recommendations to the Board of County Commissioners. The Board of Zoning Adjustment is a Quasi- Judicial Board meeting. The microphones are for recording purposes. When you would like to speak you need to come up to the podium and state your name and where you live. Seated is the Board of Zoning Adjustment in the back row and in the front row are the associates for both Boards. Today we will have an appeal for a decision that was made last month. We have some business that we will need to do. I will then read the applicants statement and then take questions from the Board members and the audience members. After the discussion we will ask for a motion and have some discussion and then have a vote by raising your hand. The Board members will then state their reasons for voting.

NORTHCROSS: At this time we will need to approve the August 2010 minutes.

No Comment

NORTHCROSS: The August 2010 minutes are approved. At this time we will have a Zoning Office report.

HOBBY: In the month of August we had 8 septic inspections, 1 septic contractors test, 6 special conferences and 13 compliance inspections. Permits to date are 42 compared to last year which was 50 at this time. The zoning permits issued to date in 2010 are 133 compared to 127 in 2009. Our Zoning permits are down around \$7,000.00.

NORTHCROSS: On August 3, 2010 there was a request for a setback variance that was denied for Arvie and Patricia Jernigan and it was denied by a vote of 2 to allow and 3 against. This is per the Custer County Resolution 4.3 number 6 "All decisions will be made by the concurring vote of all four (4) members in the case of a five member Board". The JERNIGANS have decided to appeal the vote based on Zoning Resolution 4.3 H number 8 which states "To allow a person commencing an appeal and any person directly impacted by the appealed decision, or their agent or attorney, to provide evidence and testimony". The JERNIGANS have hired ATTORNEY PETE MICHAELSON to represent them and to provide new evidence to the BZA agenda item. The Zoning Resolution on 4.4 number I. The Planning Commission may provide feedback to the Board of Zoning Adjustment and appellant for consideration. So at this time you can offer suggestions or sit in the seats behind the BZA.

BARNES: We are fine. Thank you.

NORTHCROSS: DEE do you have a question?

HOAG: I have one question. Is the structure on someone else's property?

NORTHCROSS: No, it is not.

NORTHCROSS: The appeal is from ARVIE and PATRICIA JERNIGAN 181 Ute Road Cuerno Verde Pines filing 4. I will read the applicants statement. *"We live out of state and depended on the garage builder to follow the 50 ft. variance. We met July 2 with the adjoining property owners. He understands our problem and is satisfied with marking the property clearly. We regret this problem and hope for a favorable outcome. We have no future building plans"*

Is the applicant present?

ATTORNEY PETE MICHAELSON: Yes, ARVIE and PATRICIA JERNIGAN are present also.

NORTHCROSS: Were the adjoining property owners notified?

HOBBY: No, not at this time. The only adjoining property owner that was impacted was OLIPHANT and he is present today and the property owner most affected by this. The packets contain the letters from the adjoining land owners that were mailed last time and the e-mails from the comments between their attorney and the new evidence. There is a pin locate in your packet also.

NORTHCROSS: Is there anything, Mr. MICHAELSON, that you would like to add or the JERNIGANS?

MICHAELSON: I am here to represent the JERNIGANS and the JERNIGANS can answer any questions that you would like also. I am here to present new evidence and also discuss the procedural issues that the Board needs to consider before they render a vote. Some of you participated in the last process and I noticed in the minutes there was some confusion whether the LODERGANS were affected by this decision. They are not as you can see by the site map. The LODERGANS are not affected in any way by the building. I believe that the LODERGANS misconstrued the line of the building to their lot line. She thought my property is to the North West. Instead of reading that the North West corner of the garage was the distance between the building and the OLIPHANT property. The set back variance is between the OLIPHANTS and the JERNIGANS.

I believe that the OLPHANTS have no objection to this and they can speak for themselves and they have no objection to this setback being approved. They have been coming to this property for about thirty years. This is their retirement home. MR. JERNIGAN has been a pastor, This is their retirement home and has put enough savings together to build this home and garage. This garage is pretty substantial, It is not a small structure. It is a very well built garage with a concrete pad and loft. The builder did a very nice job. He did one thing wrong he did not come to the county for a permit. Twenty years after it had been built and the OLIPHANTS did a survey they discovered that this building was within the setback. That was news to the JERNIGANS they thought the builder had taken care of it. They have tendered to the Zoning Office the fees and penalties. The consequence for not granting this variance would be that this building would need to be removed. The JERNIGANS can go to District Court and ask for a review of decisions of this Board. This is a pretty huge hardship we are talking about. A third of your property value would need to be removed to satisfy a nonexistent complaint. The Property Owners Association has provided to you that they do not have a problem. The OLPHANTS don't have a problem and even in LODERGANS first letter she stated I guess it really does not matter to me if it does not affect my property. It does not affect her property. There is no person this building is affecting, stating that this building needs to be removed. That would be the decision if you did not grant the appeal. I encourage not making a vote until you thoroughly understand what you are doing today. I also provided MS. HOBBY with photos. The t-post is the line of the property. You can get a pretty good reference on how their line compares to the JERNIGAN and OLIPHANT property. The building is out of compliance. It is not presenting any problems where it is a hazard or an eyesore to any neighboring properties. I want to address your attention to some of the procedural issues that I believe need to be resolved before you can vote today. In your Zoning Resolution 4.3 C of your Zoning Resolution requires the Board of County Commissioners, Zoning or any other Resolution, to provide rules that governs this. What matters to me are the procedures of the Board of Zoning Adjustment. The BZA can also adopt supplemental rules. After a search there has never been such a Resolution passed. You're out of compliance with your own Zoning Resolution. You are out of compliance with the direct governing of your Resolution, to know how you are voting not just your procedure. Not a habit of your chair based on years of affective ruling by the chair. One is the County Commissioners telling you what to do and what you have done supplemental. So that you know that you are doing the same thing every time. The concept of the same thing every time is called due process in the law. Equal protection is another constitutional concept. The idea is that everyone gets treated the same way and fairly. Without rules that are applied it's hard to know if that's taken place. That is why you have that part of your Zoning Resolution. In section 4.3 B6 of the Zoning Resolution says all decisions will be made by the concurring vote of all four members in case of a five-member Board. Concurring vote can mean one or two legal descriptions. One set of case law says, concurring vote which happen at the same time or the same vote at the same time. How do we know which is required here? We don't because we do not have procedural rules that tell us. I have two different Supreme Court cases that tell me two different answers. Your County Attorney disagrees with my analyses and I respect his opinion. He believes that the concurring vote is actually four votes in favor of a granting of a proposal. I disagree with that. I believe it says all decisions will be made by a concurring vote of at least four. That would be in my mind, that at least four members would be in favor or against. There is no automatic procedural rule that says if we do not say yes it's an automatic no. You do not have a procedural rule stating this. The vote last time was three to two and you voted against the JERNIGANS. If that's the case I believe that last month's vote was invalid. You need to have a four to one vote either for this proposition or against.

I want to go over your procedures for granting a variance Section 4.3 F of the Zoning Resolution speaks specifically to C.R.S. 30-28-118 which is the basic reason for variances. I want to emphasize this. There is a reason legally why there are variances. Clerks and public policy makers have decided that absolute strict compliance of these rules can constitute a taking of people's property rights with flexibility to deviate from the rules. Having said that it is not a presumption that you will grant variances. The idea that it is non compliant, it should be denied, is not what variances are all about. Not every violation is not at ultimate denial that is not what variances are all about. I hope you focus on other reasons and that it was not just a violation. What the State Statute says that you have incorporated into your Zoning Resolution is basically exceptional circumstances. This property that the JERNIGANS own is rocky and is steep. It would be very difficult for them to move their building. I believe that is why the builder choose that site. I believe that the topography there does qualify for the exceptional circumstance set out in the basic Statute. Language that is in your code that speaks directly speaks for the code. Variance should grant relief from the Zoning Resolution in unusual and extraordinary circumstances. I believe that topography and the narrowness and steepness; it does not adversely affect the public health, safety or welfare. The Association or the immediate neighbors have no objection, no one else in the public has objected. Giving a variance within itself does not violate the intended Resolution. Subsection 2 part F of 4.3 Variance should not be granted if created by the current owner. I know that one member at the last meeting thought this was created by the owners. It was not. The owners hired a builder and thought he took care of it. Twenty years later they find out that he did not. That is not a circumstance that was created by the JERNIGANS. It's their problem they need to fix it; they have paid the fees and the penalties. The third issue you should look at is Variance should not be granted if the granting substantially or permanently injures the appropriate use of adjoining or adjacent property, it does not. The fourth line, do not grant a variance if it alters the essential character of the zone. It does not alter the character of the zone. It's a permitted use. It's just in the wrong place. We go to section H number 4 Are their exceptional or extraordinary circumstances, yes I believe there are I think construction of this building anywhere else would be very difficult. Number B. That owing to such exceptional or extraordinary circumstance the literal enforcement of specified provision of this Resolution would result in practical difficulty or unnecessary hardship. Not created by or attributable to the applicant or the owner of the property. If you deny this variance you are going to make these people destroy a huge portion of their property value. The only hardship is what you force down the JERNIGANS throat and they probably will accept it and tear sown their build. I will suggest that they take it to District Court. These are good people that should not be denied because it's a reasonable request. Number C states a variance is necessary for the preservation and enjoyment of a substantial property rights. They are enjoying private property rights like most people they are in a residential area. They understand the builder put the building in the wrong place they need some relief. Number D that granting the variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity. This variance does not affect anyone else. After you have asked your questions I would like you to grant this variance the OLIPHANTS are here today and they are the number one objector and they do not have a problem with it. Please look at all the new evidence before you vote today. Decide whether or not which I believe is the clear resolution of the law of four to one vote in favor. If it's less than a four to one vote then the vote continues until a decision is made. Four against or four in favor.

NORTHCROSS: Do we want a decision now on how we vote?

MICHEALSON: My suggestion is you hear all the new evidence and if there is going to be discussion on the procedural matters you do that at a later after you hear all the comments and I do not believe that is subject to my comment or anyone else's.

NORTHCROSS: MR. OLIPHANT would you like to comment?

OLIPHANT: We own the property adjacent to the JERNIGANS they have been good neighbors and we have known them for about twenty years. A couple of years ago when a case in Bolder came up about adverse possession we got interested in our property and how close they were to the line and wanted to check it out. We hired a surveyor to put a line where the property line was. We wanted to put a fence up and contacted the HOA and then they contacted the Zoning Office and that is how this came about. Where the garage is we have no problems at all. We have no issue with the garage and have no plans building down there and we hope this can be resolved with no hardship to them.

NORTHCROSS: Thank you, any question from the Board to Mr. OLIPHANT?

No Comment

NORTHCROSS: Does the audience have any questions?

No Comment

MULLEN: MR. OLIPHANT I have a question that came up at the last hearing. We had heard they were 37' over their encroachment of your property that is why we assumed there was a problem there.

OLIPHANT: They had been driving on our property and that is why we had a survey.

MULLEN: At some point the encroachment would had been in effect and they would have owned 37' of your property?

OLIPHANT: Yes, eighteen years down the road.

MULLEN: Why did you and MR. JERNIGAN work out a land swap.

OLIPHANT: We are not interested in doing a land swap.

MICHAELSON: This property is not on the OLIPHANTS property. It does not meet the fifty foot setback requirement required by the Zoning Regulations. It is within the property of the JERNIGANS.

NORTHCROSS: Any other questions?

STAM: We had a fine legal presentation here today. I think it's important that we sort out what the real legal issue is. The argument has been made that somehow the Board is out of compliance with what it needs to do. According to 4.3 of the Zoning Resolution number C that states their needs to be general rules that govern the organization, procedures and jurisdiction. In 4.3 it there is a section on establishment there is a long section on who can be members, what officers can be on the Board and how they are to be elected. There is a considerable amount of guidelines on what criteria on how the Board is to make their decisions, duties of the Board and a section called General rules of the Board of Zoning Adjustment. I suppose if we really want to get into an argument we could get in an argument whether those are good enough or not. That is not the case that there is no general rules set forth in the Zoning Resolution for the Board of Zoning Adjustment and I suggest that we put that issue aside and that we make a vote on the merits of this. The issue has been raised that whether 4 votes majority denied or against the motion by the application whether there has to be a vote on the other side. I was comforted to hear that the County Attorney disagrees with the applicant's lawyer. To me it makes no sense at all. The general rule is everybody has to comply with the setback. The only way you can be excused from that is if you come before the Board and get an affirmative vote for the variance.

If you can't get an affirmative. I do not know if it means you have to have four votes in favor. The fault position is that you have got to get the four votes for the variance or your back to the general rule of the 50' setback. A further argument was made here that was that none of the circumstances here when the application was made were created by the owner. The argument made was that it wasn't him it was his agent the contractor. This is the first time that I have heard anyone state that a principle is not responsible from the actions of his agent. I do not believe that the compliance with the Zoning can be delegated to a contractor. The responsibility is with the owner. If he decided to take the risk he can't say it's not my fault. Anywhere in the law you can't blame your agent. I would not be happy if the JERNIGANS had to tear down there garage. I don't think it would benefit anyone. I am also troubled that this Board would take action that it does not have the real authority to take. To grant a variance it does not say in the Resolution that they can grant a variance any time that the neighbors don't object. It does not say that the Board can grant a variance any time that they don't think it will do any harm or anytime they think it's reasonable. That is not what it says. It says that this Board can grant a variance only in very limited circumstances. It states that there has to be very exceptional circumstances for example narrowness or that the current owner did not cause this himself. So far on this there was an application filed by the land owner and new evidence was made possible at no time was there an explanation. Other than the landowner thought his property line was somewhere else. The applicant needs to provide evidence that this is the only place that he could build. Variances are allowed on exceptional narrowness etc. that were not caused by the land owner himself. The very first time today we have heard that this is probably the only place he could have put his garage. That is what variance provisions are for. We have no evidence of this at all and I think unless the Board has evidence and is not the doing of the agent or the landowner it is outside the duty of this Board to grant the variance. The neighbors have no problem with this. Why care about this? I think we should care about this. This is a quasi-judicial process that we are going through here and that to me means that the Board needs to take the laws that are written and look and see if they have been satisfied. If we push aside that law and hand out variances because they are popular and no one cares or we think it's a good idea. It stops being a quasi-judicial process and becomes a political process. I am not in favor of tearing down this garage but I am very concerned that the applicant is asking us to do something that we do not have the authority to do.

NORTHCROSS: Thank you.

HOBBY: I would like to comment we do not allow a builder to sign the homeowner's application. A builder can sign if we receive a waiver from the homeowners, you are responsible.

DEARBORN: There was no Zoning Permit.

HOBBY: Correct.

MICHAELSON: The procedures do not describe the voting process. You have a lot of good stuff in the Zoning Regulations it says nothing about what a concurring vote means. Doesn't say what four to one vote mean. You can say what you want to day. All decisions have to be a concurring vote of four to one. This County says come to this body with your request yes or no is the answer. It states four to one. If you do not get four to vote no it is not a decision. In my opinion there hasn't been a valid decision that says no or a valid opinion that says yes. Your ordinance says all, I did not write it. The commission did and they give us procedural decisions on what they meant by all. If you don't get four in favor you default to no.

The JERNIGANS can't have a clue to know what they need to do if they don't understand the basics of the Board. Does the Board even know does? The Chairman know if three to two is good enough? If there are only four members that show up in a quorum does three to one work? It says four to one all decisions. The gap is in the procedural rules that I am perceiving. That issue needs to be decided today. MR. NAYLOR has a different opinion and I respect that opinion. What is notably missing in section A or B is the words and or the word or. If you are required to adhere to all five then you have allowed illegal variances. If you want to a say that the act of the agent twenty years ago was for the JERNIGANS is attributable and you don't care if it's unreasonable for them to destroy the building. All you care about is that they are in non compliance and their variance is denied. You probably have the authority to do that. Do what is reasonable. I believe everything you have done at this stage is incorrect. You do not have a standard in voting, we don't know if the five standards for findings is all or some. I have offered before and I insist that the JERNIGANS speak. If there is one member of the Board that does not accept the representations that I spoke about then they JERNIGANS can speak.

NORTHCROSS: MR. and MRS. JERNIGAN would you please come up to the podium.

TONSING: Can we please have the plot plan back up on the wall.

HOBBY: This is a plot plan the MR. JERNIGAN did himself. The pin locate is in your packet.

NORTHCROSS: Mr. JERNIGAN could you please tell us about how you came to placing the garage there and someone else built the garage.

JERNIGAN: When we built the house I took time away from my job. I served as a pastor in Fort Worth. So I was here for the building of the house. It took longer than we had planned. So we contacted someone else to build the garage. I needed to get back to work and trusted the contractor to stay away from our property line by fifty feet. When we bought the property our real estate agent told us that the line went one way. When actually it went the other way, we walked and found three corners but could not find the fourth corner. It was late and MR. JERNIGAN the line goes behind these out cropping of rock and we took that as the gospel. Only to find out later, from the OLIPHANTS that we were driving on their property and encroaching on the set back. A lot has been said I am not asking for special treatment, only to give me consideration. This is a variance Board and you do have the power. There has been variance granted. We have permission from the OLIPHANTS and they have no problem with it. This is a very dramatic situation if we have to tear down our garage. If I have to tear down the garage I cannot build another one. My retirement has been cut as we have been in Colorado Do for us what is in your power to do.

NEPA: For the benefit of us that did not go on the site tour could you describe the topography and why you picked this site for your garage?

JERNIGAN: Yes, Our cabin was built for the view of the mountains. We have two lots and we have built to the back of our property. We thought we were within our property setbacks.

TONSING: You requested a variance of 37' from the North East cause you were 13' from the line you also have a request of 34' setback.

JERNIGAN: Yes, because of the lay of the land and the position of the garage.

TONSING: On our initial request of this there was an e-mail from the LONDERGANS that said basically they were upset about the location of this garage.

HOBBY: When we had a pin locate I believe she understands that she is not close after MR. MICHAELSON contacted her.

MICHAELSON; I have no correspondence from her at this time.

TONSING: Why would she have a problem it is clearly over one hundred feet from her property and the requirement is fifty feet.

JERNIGAN: We are on lot eleven and if we have to tear down the garage there is no place to put the garage because of the topography.

NORTHCROSS: Any questions or comments.

DONLEY: I do not think you should proceed any further until the County is represented by council.

TONSING: The pin locate is slightly different.

HOBBY: They will actually need 38' on the North East side and 25' 9" on the North West.

NORTHCROSS: You had a gentleman build my garage and on the site you stated that this is where I want my garage. You told the builder to check with Zoning and get a setback. You stated that you walked up there and walked the line and there was plenty of footage.

JERNIGAN: I did say that I wanted the garage in this general area. I did say get a permit and check the variance. The builder did say do you think there is plenty of room, I said yes based on what the realtor told us. The builder never notified us that there wasn't room.

NORTHCROSS: Did you get the permit for your house?

JERNIGAN: Yes.

NORTHCROSS: Any other questions?

HOAG: Do we have any comments on this application from the County Attorney.

HOBBY: The only correspondence from NAYLOR is MR. MICHEALSON questioning the way we vote four out of five members have to agree to allow a variance or it's automatically denied. MR. MICHAELSON disagrees because of the word concurring.

DEARBORN: How do we handle that if there is a dispute between the two attorneys?

HOBBY: I attorney trumps there's.

TONSING: Yes, I do to.

TONSING: I would like to make a motion that we grant the variance of 38' on the North East side and 25' 9" on the North West.

NORTHCROSS; Any discussion? I believe MR. MICHEALSON wants a decision on the voting.

MR. MICHEALSON: Mr. NAYLOR even this morning has made a recommendation that I disagree with. I would encourage you as a Chairman that the vote even if its three to two that there would be another vote until its four to one.

NORTHCROSS: I disagree with that.

MICHAELSON: We could be here for a very long time. That is the way I read the ordinance.

NORTHCROSS: No, it has to be four to one.

HOBBY: In correspondence with NAYLOR its four in favor or automatically denied. We will not go on and on. We cannot sit here and try to persuade someone to change their mind. So what they vote is final that is why a five person Board is harder to come before.

MICHAELSON: I know he said that. We also have that concept in a jury trial and it's unanimous until a Judge relieves them. You could spend days or weeks until a Judge relieves them. I know that this is not a jury. The judge will send you back until you come to a unanimous decision. This is a quasi-judicial reading and your rule says four to one. If that means you lock yourself in a room until you make a four to one vote. I think that if you don't four to one against its tabled to the next meeting.

NORTHCROSS: Would you please repeat the motion.

HOBBY: Dave made a motion that the JERNIGANS we grant the variance of 38' on the North East side and 25' 9" on the North West.

NORTHCROSS: I believe that we need a motion to reconsider. We are voting on what happened last month. What happens to the vote last month? We need a motion to reconsider the motion that was made last month.



TONSING: Can I offer a motion to rescind the appeal?

NORTHCROSS: We need a motion to reconsider the previous motion. Then a motion that we rescind the motion from last month. Then the motion that you just made.

STAM: I don't see that, it usually stands as a Board of appeals. You can just vote to reverse the decision that was made last month.

BARNES: Mr. Chairman I think you ought to consider redrawing this motion. There are a lot of procedural calls that require legal counsel and we do not have it here. I would encourage you that you wait until legal counsel is present.

TONSING: We have had two individuals that have suggested that.

HOAG: I was wondering why MR. NAYLOR hasn't been contacted.

NORTHCROSS: He has been contacted and he disagrees with MR. MICHAELSON.

TONSING: On the basis of that and we are still in discussion. I made a motion. We are not going to deal with procedural issues. We need to get through this issue today and re-address the procedural issue later. Following the advice of our attorney we are pretty much point on with what we are doing here today. I made the motion, now I am blindsided to the fact that I might have to rescind the original.

NORTHCROSS: No, what we are doing is reconsidering what we did last month.

HOBBY: No, we denied it last month that is over. This is an appeal.

TONSING: I agree that is over, it is very unusual to us. I believe we move forward.

NEPA: I have to agree with Mr. BARNES and MR. DONLEY. If the Board would exceed its authority they could be in a spot. I think it would be wise to table until council is here.

TONSING: I disagree our attorney says we are on point and we move forward. I appreciate what these gentlemen have told us. We will take time to review these procedures. This is not the time or the place to alter the procedures. We are going to have a debate up here and we have legal advice stating that we are point on.

NORTHCROSS: We could table it or postpone it until we get legal advice.

TONSING: Why are we doing it?

NORTHCROSS: Mr. MICHAELSON is still not agreeing with our attorney.

PATTERSON: If MR. NAYLOR was here he would disagree with MR. MICHAELSON.

TONSING: Based on the knowledge that we have and the books that we were given on today's procedure. I say we press ahead. MR. MICHAELSONS biggest issue is the four to one vote. Given everything we know now and procedurally and the new evidence that the OLIPHANTS are the only neighbors that are affected by this. I suggest we move forward.

NORTHCROSS: Do you have any suggestions Commissioners?

ATTEBERY: Usually in a Board of Zoning meeting the County Commissioners are not attending and do not offer suggestions. If you want comments from us we will need to go back in session. We have not gone back in session. That is something we do at the beginning of the Planning Commission meeting. If you would like comment from the Board of County Commissioners we can go back into session.

NORTHCROSS: Yes, would you do that please.

ATTEBERY: I make a motion that the Board of County Commissioners goes back into session.

CUSTER: Seconded the motion.

HOBBY: County Commissioners are in session at 2:35 P.M.

NORTHCROSS: What is your feeling since MR. NAYLOR isn't present.

AUSTIN: I was not part of the conversation the leader of the Zoning Department says that MR. NAYLOR enforced the four to one vote. I agree with MR. TONSING lets move forward. MR. MICHAELSON issue is the word concurring and what does it mean.

CUSTER: I think we should see what we have in terms of a vote.

ATTEBERY: Yes, I would agree with that and that would be my suggestion. The procedure could be a problem. The vote last month our County Attorney said that it needs to be a four to one vote. If it's a three to two vote they are denied again. They have a process that they can go forward with that would involve a little more of the Judicial system. The only comment that I will make to the Board. Not necessarily a legal or procedural thing. That in all my years on the Planning Commission and watching the Board of Zoning Adjustment and Zoning and Planning office. It has been always my feeling that we are here to help people. I believe that is very important. The procedure if we have a legitimate reason will work it out. The voting procedure is four to one yes or no.

HOBBY: Dave made a motion to allow the JERNIGANS the variance of 38' on the North East side and 25' 9" on the North West. KEN PATTERSON seconded the motion.

NORTHCROSS: All in favor raise your hands.

Four in favor

One against

REASONS:

DEARBORN: Yes, I said this at the last meeting. I really don't think it's fair to tear down this building when there is no place else to put it. At the time I voted no, because I felt the whole situation was not clear. In this case I feel it is a lot clearer and the facts this time concerning the neighbors and who would be truly affected. We are here to help people not to bury them. This place cannot be seen anywhere near the road. I don't see a problem with it this time.

PATTERSON: Yes, with it being ok with the effected neighbor and the topography.

HOAG: One of my concerns is the impact on the county and since we do not have any input from the County attorney is question to me. It goes back to the neighbors and who it affects and they do not have a problem with it.

TONSING: Yes there was no negative response from any of the surrounding neighbor once we discussed the LODERGANS and discovered that they are not affected I am comfortable with the decision.

NORTHCROSS: No, I still feel that there was no hardship brought up other than the garage would have to be removed. There are other options, swap land, buy land you do not have to remove the whole garage. I do not want to see it removed. Our Resolution states you cannot grant a variance that was caused by the original owner. I was trying to put myself in your position. You're a very smart person and I can't figure out how you did not know that this was done. A builder does not get a permit does not charge you for a permit. On your plat its seventy four feet if you would have attached the garage to your house it still would not made the setback.

JERNIGANS: I would like to thank you all and you don't realize how we appreciate this.

NORTHCROSS: Do we have anything for the month of October.

HOBBY: The BZA has nothing for the month of October.

ATTEBERY: I make a motion that we adjourn the BZA meeting.

Motion passed unanimously.

NORTHCROSS: Made a motion to adjourn 2:53 A.M.

HOAG: Seconded the motion.

BARNES: Welcome everyone. This is a joint meeting of the Board of County Commissioners and the Planning Commission. I will call the meeting to order at 2:57 A.M.

ATTEBERY: Make a motion to call the meeting of Board of County Commissioners back in session at 2:55 A.M.

CUSTER: Seconded the motion.

Motion passed unanimously

ATTEBERY: Commissioner AUSTIN will have to leave at 3:30 P.M.

BARNES: The first order of business will be approval of the minutes of the July 6, 2010 meeting. Are there any additions or comments. If not the July 6, 2010 minutes are approved as distributed.

We already have heard the Zoning report. I would like to reemphasize that if you would like to make comment today you will need to come up to the podium and state your name and address. The first agenda item is a Plat and *Replat*. I will the applicants statement '*This Vacation/Replat is being applied for to vacate a platted cul-de-sac within our lot boundaries. This cul-de-sac was never constructed by the original developer of Conquistador Estates and as such has never been utilized by anyone. This platted cul-de-sac applies a hardship on our ability to utilize or build on our property and meet the setback requirements. The existing road allows room for vehicle turnaround and we feel the cul-de-sac is unnecessary and will never be built.*' I got ahead of myself and we are short members on the Planning Commission and we will need to replace three members with three associates.

HOBBY: May we borrow your hat MR. DONLEY

BUCKLES: Picked three names.

HOBBY: DOROTHY NEPA, BRAD STAM and DALE MULLEN will replace KEITH HOOD, PAT BAILEY and SHERRY RORICK.

BARNES: MR. SHY will represent the FLUKES. Have adjoining land owners been notified.

HOBBY: Yes, if you are in a subdivision everyone that has property within that particular subdivision needs to be notified and the Planning and Zoning Office notified twenty three adjoining land owners, with one comment in support of the removal of the cul-de-sac.

SHY: My name is KIT SHY and I represent LARRY and JAMIE FLUKE. I will make my presentation short. During the course of doing a site plan for the FLUKES on height restrictions, septic and setbacks, we discovered in our research that a cul-de-sac was platted on their property. The main part of the road is platted in Conquistador Estates in Filing One and in Filing Two where the FLUKE property is they added on a cul-de-sac that has never been built on the ground. The cul- de-sac extends over 140 feet into the property. The best site for a structure is where the cul-de-sac is and we have gone into the Zoning Office and discussed the best way to do this and also had a meeting with the Board of County Commissioners and the County Attorney. We agreed that the best way was to do a Vacation and *Replat* to eliminate the cul-de-sac. This cul-de-sac has gone for forty years and has not been noticed. The building site is limited on this property.

HOBBY: Prior to the meeting I went out to the property and it is not land locking anyone and it is not a health or safety issue.

SHY: The cul-de-sac is not serving anyone. The entire cul-de-sac is in the FLUKE property.

DONLEY: Is it there an easement?

SHY: Yes

DONLEY: So the FLUKES own the property?

SHY: Yes, the property lines on no other lots would change.

STAM: Who has the easement?

SHY: It was granted in total to the owners in the subdivision.

STAM: Can the easement be wiped out?

SHY: That was the recommendation of the County Attorney with full recognition of the property owners in that subdivision.

BARNES: Any other comments?

NEPA: Is it being used right now? I am confused about the different filings.

SHY: No, it is not being used and in Filing One it gave access to the FLUKES property but in Filing Two it was platted as a cul-de-sac.

BARNES: Any comments?

No response

BARNES: With that I will entertain a motion.

BUCKLES: I would like to make a motion that we recommend to the County Commissioners approval of this request.

COKER: Seconded the motion.

All in favor

Motion passed unanimously.

REASONS:

BUCKLES: Yes, it is a simple issue and time has ruled on the use of the cul-de-sac and I saw no reasons not to approve it.

NEPA: Yes, it has not been constructed. The only people who would have access to it don't need it.

COKER: Yes, there doesn't seem to be a reason why it's their and its not being used.

DONLEY: Yes, if it was built it would not benefit anyone; I have no reason not to approve this.

STAM: Yes, Sounds like an elimination of the cul-de-sac will give the owners a better place to build and no harm to the neighbors.

MULLEN: Yes, No reason not to.

BARNES: Yes, It's a very practical solution and no harm to the neighbors.

BARNES: The recommendation to the Board of County Commissioners from the Planning Commission is to approve the Vacation and Replat.

ATTEBERY: Thank you, I make an motion that we accept the Planning Commission's recommendation.

AUSTIN: Seconded the motion.

ATTEBERY: Any discussion?

No Comment

Motion passed unanimously.

BARNES: Our next item on the agenda is a Special Use Permit for the Pines Ranch. I will go over a little bit on what Chairman Northcross said. We are an Advisory Board to the County Commissioners. A Special Use Permit involves two steps. A Presentation which is what we have here today which is fact finding and information. There will be no decisions made here today. Then most likely on October 5<sup>th</sup> a hearing will be held to approve or deny the Special Use. I will start out with the applicant's statement then I will go over the process that we will use today. The applicant's statement is as follows.

APPLICANTS STATEMENT:

For many years The Historic Pines Ranch has enjoyed the privilege of building relationships with various individuals and families via our dude ranch business. At the end of our 2009 season we started pursuing other avenues of keeping our ranch open but switching our facility to an entity that would be able to give back to those who are in need. Due to our work with the Make a Wish Foundation we had decided that a ranch for children with problems would be something we would enjoy very much. This spring we were contacted by several individuals who were actively engaged in making a difference in the lives of youth's ages 12-18. After several meetings with them we realized that the Historic Pines, with limited cost could be changed from a vacation ranch to a therapeutic equestrian ranch. This change is very exciting to us!

Currently our business partners, who run two treatment centers in the state of Nevada, have seen great successes in helping young people make better choices in their lives. The youth who will be treated at the Historic Pines Youth Ranch will have the opportunities to participate in equine therapy, various works and service projects. A key part of the program for the youth will be geared toward giving back to the community they are in through clean up projects, mending fences, painting barns, helping farmers to plant crops and other such notes services. The opening of a youth treatment center will not only be of benefit to the youths but will also benefit the community and allow individuals who are interested in the community to volunteer to help the youth learn skills, crafts, talents and other needed skills to be effective adults. The ranch will provide the youths with onsite therapy, skills, school, recreational actuates, and life building skills.

We feel that in the midst of these economic times that our proposed new business will also bring the potential of new jobs and economic benefits to the Westcliffe area.

We look forward to our community helping make the difference in the lives of these youths.

Sincerely,

Dean and Jodi Rusk

Kenny Anderson

Brett Belliston

Christy Kane

BARNES: Before we start I am going to go through how we are going to do this process. First of all the Director of Zoning will comment on the water and sewer system, then comments from adjoining property owners and interested parties. Then we will have the applicants comment on their application. Then comments from the Planning Commission and Board of County Commissioners. We will then take comments from the audience. The other comments that the Planning Office has received will be made available at the Zoning Office for everyone to see. Since there are a lot of people who want to comment we are going to limit this to one comment or question per person for a three minute period and PAUL BUCKLES will enforce this. After we receive all the input from the audience. Then we will go back to the Planning Commission and Board of County Commissioners. That will be the process. PAUL do you have a comment?

BUCKLES: Yes I need to make a statement. On July 28<sup>th</sup> in my capacity as a Board member of Valley Bible Fellowship we were approached by the Pines Ranch asking if we would consent as a church to be an evacuation facility for the potential of Pines Ranch Youth Facility. We did concur to that. I chaired that meeting being in the capacity of Vice Chairman and I voted in favor of that motion because of that contact and the interest in public trust. I am recusing myself as a Board member. The letter I wrote was made available to JACKIE, VIC and LYNN ATTEBERY.

BARNES: That leaves us to only six members on the Board will KEN LANKFORD please move to a seated position.

KEN LANKFORD replaces PAUL BUCKLES

BARNES: JACKIE will give her report.

HOBBY: Eight adjoining land owners were contacted by certified mail. Five letters were read aloud and are copied at the end of the minutes. Five interested parties were also contacted with three parties responding and read aloud and copied at the end of the minutes. Concerning the septic system, we feel they are adequate at this time.

BARNES: The applicants will make a presentation at this time. The applicants are HARVEY D. and JODI RUSK, KENNY ANDERSON, BRETT VELLISTON and CHRISY KANE

ANDERSON: I am KENNY ANDERSON I am one of four members requesting a Special Use Permit for the historic Pines Ranch. I will speak for a few moments and then turn it over to JODI RUSK. I will talk a little bit about the equine therapy that is a large part of what we do. The majority of the time I will let CHRISY KANE talk she is currently operating two successful Youth Ranches in Nevada. In listening to the comments of some of the letters I can certainly understand when something new comes to a community. I would probably have some of the same reservations and concerns. I have had the opportunity to work with youth a good chunk of my life. Specifically kids, young men, twelve to eighteen. For me it has been rewarding to see young men change their life. I hope we all can see that when we are young sometimes we make very bad choices. Here we have the opportunity to take youth ages twelve to eighteen who are not premeditated violent kids and not sex offenders. Kids that made a few bad choices in life, might be shop lifting taking something from a store. Maybe they got into an altercation at school or maybe some truancy involved. This ranch is designed for kids to learn some good principles. Principles that I believe we want our own kids to learn, accountability, hard working. The education will be at the facility. The youth are monitored twenty four seven; they are monitored even when they are sleeping. It could be a fantastic opportunity to encourage employment in the community. We are looking at a qualified person to be a Clinical Director for the facility. We think it will be a great opportunity for the community to embrace these young men and women and give them the same opportunity that we would enjoy ourselves growing

up. Some of the children didn't have a mother or father growing up. I know there are a lot of concerns for this community and I hope that you would at least have an open mind. Hopefully we will be able to resolve some of these concerns and be able to provide an opportunity for these kids. I am going to turn it over to JODI RUSK to talk about our equine therapy for these kids. Then CHRISTY KANE will talk who is an owner of the White Pines Youth Ranch.

BARNES: Thank you MR. ANDERSON

RUSK: Thank You, MR. Chairman. Would it be alright if I passed out some information about equine therapy and how it relates to the ranch.

BARNES: Yes, you may would you please identify yourself.

RUSK: I am JODI RUSK, DEAN RUSK's wife and we run Pines Ranch. One of the things that I would like to touch on and we will go through this fairly quickly. The first three pages of the handout on the right hand side are statistics and information on equine therapy programs and how they work. I have highlighted or made a star next to them with the relationship between equine therapies for the troubled teens. All these settings have found that equine therapy works well with all types of disabilities. It is very appropriate for teens with all types of behaviors. The horses are attuned to how the children are feeling. It is very much a discipline process for the children to hold their emotions under control. They put aside what is going on in their lives and have a successful outcome with the horses. This therapy program is going to take three to four hours every day. Behind the folders are demonstrations of ranches that are youth ranches that work with the equine therapy. The Mount Carmel Youth Ranch, this one lists their entire statistics with eighty three percent success rate. Which means that eight three percent do not go back to committing crimes. All of these ranches have the same thing in common, it is a very stringent application program in the way they receive the children. Children with a violent history or background are not allowed. Children that are sexual predators are not allowed because they do not work well within the program. This is a success program this is not a prison or a half way house for children to flop until they are eighteen years old and can leave on their own. There is a goal to this program and there is an end to this program. The application process is very long. That is the type of kids that will be allowed. These kids want the chance to succeed and they want the chance to be out of trouble. DEAN and I feel that we are very appropriate people to run an equine therapy program like this. DEAN has been running the ranch for twenty six years he has raised horses and he knows what good they can do for children. We came to this point after hosting children from make a wish foundation. The fact that they got to come and be with horses as part of their wish was so rewarding to us. We thought about this for quite a while and how the dude ranch business and vacations have been going downhill for quite a while. We found ourselves in a position that we knew we were not going to have a business in a year or so. We looked for a program such as this where we could give back to children in need. We feel this is a wonderful program and are very much in favor of it. Does anyone have any questions about the equine program? If not I will let CHRISY KANE speak

BARNES: Thank you,

KANE: I am first going to let you know of my credentials. Then I will explain the two current programs that are currently. I have a masters degree in medical counseling from Brigham University and Phoenix. I did my residency in a residential treatment facility for troubled youth it was a locked down psychiatric hospital. When I got done with my residency I always had a desire or dream to create a program that was different for kids. I did not want kids going to hospitals or jails that made mistakes. Our first facility is called White Pines Boys Ranch. It is different than any other facility in the state of Nevada. I will be happy to provide the Commissioners with individual that you might want to contact in White Pine County regarding

our facility. We opened White Pine Boy Ranch and it is a 650 working cattle ranch. We take youth from the ages of twelve to eighteen. That would be the same as the Historic Pines Ranch. That is the same population we serve at White Pine Boy Ranch and Day Break Equestrian Center in Nevada. A typical day for these young men and women is they get up in the morning and they attend a therapy intervention group called sunrise. They set their goals for the day what they want to do and what they want to accomplish. Then you are divided into squads. One half of them go to school then the other half go out on the working ranch or go to the Day Break Equestrian Center. They attend school and we pay for it, the education is paid for by the White Pines Boys Ranch or the Day Break Equestrian Center. We will do the same here in Colorado if there are not funds to educate the youth. We have met with the person who is over the IEP program and they have submitted a letter to Human Services granting us the authorization to have an education program at the Historic Pines Youth Ranch. They have indicated that there are funds available by December for education. If not, we will do an on line education program. Then the owners of Historic Pines Youth Ranch will pay for their education. Then we split they come in and we go to lunch. The ones that were in school go out on the ranch and the others go to school. Then we have dinner and then they attend an hour of class on basic life skills. In that group we process what happened during the day their behaviors any conflicts. They are allowed some down time we do sunset group, and then they get to go to sleep. They get up at 6:00 A.M. and retire at 10:00 P.M. They are supervised in there down time; it is very clinically based program. They receive five hours of therapy a day, four hours of schooling and then down time that is kind of how the program runs at both the facilities in Nevada. It would be the same program here at Historic Pines Ranch. I have read some of the e-mails concerning this so I will answer some of those. Have we had runaways? Yes at White Pines Youth Ranch but not at Day Break Equestrian Center. The runaways from White Pines Boys Ranch were found the next day by my staff. We have a procedure that is in our Policy and Procedure manual that is submitted to the Department of Human Services and they have to approve it and it tells what we do if a boy runs away. If a boy runs away we go to a locked down policy until all the boys are accounted for we notify the Sheriff Department and look for the youth. Has the boys ever caused any damage to property when they have run away? No, we have not had any issues with what they have done when they ran away. The nearest house within White Pines Boys Ranch is within a mile. The nearest road is five miles. At Day Break Equestrian the road you can see from the front doors and the nearest house is within thirty feet. When we first went into White Pine County we had people with concerns. Since we opened I have been approached by the County Commissioners and told we do not know why we gave you such a hard time. It's a wonderful facility. Our youth have cleaned up churches, rodeo grounds and cemeteries. It is very important that they are community orientated. That is part of the court order. The youth can come from three agencies. They can come from Department of Human Services or privately placed or they can come from the Department of Youth Corrections. We have submitted a 584page application to the State of Colorado Department of Human Services and we are waiting for their approval. If they approve that we will be licensed as a Therapeutic Residential Child Care Facility. That means we can only take a certain type of youth. We will not be licensed to take sex offenders. All youth in the State of Colorado have to take a test, it is considered a risk test and depending on how the score a number five is considered the highest risk. We will not take these youth. The youth that we take will score a three or four. Sometimes five depending on the circumstances but ninety percent of our youth will have a score of three to four. Every youth that comes into the facility is required to have that prior to placement. A kid that is diagnosed with schizophrenia, anti-social or narcissistic personalities does qualify for our program. We do not have the psychiatric tools



to treat them. We will not take anyone who has been diagnosed with pre meditated intent. That means a young man or young woman that took a gun to school with the intention to shoot someone will not be admitted to our program. Most of the young men and women that come to our program usually have mental health issues; depression, anxiety, bipolar or been sexually abused and removed from their homes or committed petty crimes. Do we accept felons, Yes. On a case by case basis, let me give you an example. One of the young men that graduated from White Pines in the State of Nevada. I do not know about the State of Colorado but if you use a weapon in a fight it is a felony. We took a look at that and read all his documentation and we admitted him to our program. We look at all the documentation from the state and make our decision based on that. So I cannot tell you that we will never take a kid that is not a felon. But I can tell you it would be very rare and on a case by case basis. A typical stay at White Pines Boys Ranch and Day Break the average is ten months. All of our graduates this far, we have only had two reoffend. We find with the work ethics and working with the horses is very beneficial. Does that mean we save all the youth. No there are many youth that we have terminated from our program. One of the boys came into the lodge after digging trenches and said he wanted to file an abuse case. I said ok what is your complaint he showed me his hand and they had blisters on them he said this is abuse. I said no it's the first time he had worked. He went on and graduated and is currently an eighteen year old welder. That is the kind of difference this facility has made. Do we save all the youth no and some do not fit into our program and they are terminated and sent back to the agency where we received them from. Does that mean one strike and you're out no if you consistently break the rules then you're removed from our program. We have 45 staff at White Pine Boys Ranch and 18 staff at Day Break Equestrian Center. We have on site a Clinical Directors with a PHD in Psychology and Master Degrees in Mental Health Counseling and Social Workers. We are a one to eight ratio, which is one staff member to eight youth at all times. They have to be on site at all times that is a requirement of Human Services. The Department of Human Services can come on site at any time. The Department of Youth Corrections can come on site at any time; any parent that places a youth in our facility is authorized to come on site. We a subject to regulations at all times. There are reports that we make on a weekly and monthly basis for the State of Colorado. It was mentioned that we were for profit and we are. Funding from the youth come primarily from the State of Colorado, parents that place privately or Medicaid depending on the youth. We do not anticipate placing youth in our facility from out of state unless necessary we anticipate that all the youth will be from Colorado. In order to be admitted to our facility they must fill out the application process and then that will be screened by our mental health staff. There is a concern about boys and girls currently in most facilities, it's mixed. The White Pines Boys Ranch its boys because they work with cows, drive the swather, brand and work with the horses. They will be separated by houses and staffed at all times.

BARNES: Thank you, we will now ask the Planning Commission to ask questions.

DONLEY: I am not clear on the schooling, you said that all schooling will be done there?

KANE: Yes, it will be on line school or paper material.

DONLEY: There will not be any impact on Custer County School?

KANE: No

DONLEY: What about sports?

KANE: We did talk to the principal and the president of the School Board and that is something we would like to entertain but not at this time. Because I believe there are requirements that they need to meet to play. Since it is private school I don't know believe they qualify.

STAM: I assume that you will bring kids from out of the county?

KANE: Yes, from all over the State of Colorado

STAM: What extent would this be good for Custer County kids?

KANE: We have already contacted other counties, Arapahoe, Denver and Adams County. They have already indicated there is no other facility like this with an outdoor equestrian program. Currently all the facilities in Colorado are lock down facilities. I did not talk to Custer County, KENNY did.

ANDERSON: I did speak to Custer County and it was more of an informative meeting.

BARNES: Commissioner Custer

CUSTER: Thank you for coming here today, I have several questions. First of all you said that your referrals will come from Social Services, the Court system and Youth Corrections. What kind of conversations have you had with the Eleventh Judicial District that's the District that we are in.

KANE: We currently have met with the State of Colorado.

CUSTER: But not our local?

KANE: We have scheduled meetings with them throughout the next month. Let me explain the process on which a youth can be placed. The Youth Corrections has a treatment team and on that Board is a member of youth Corrections. They decide where a youth should be placed. Then they contact us and they decide whether our facility would be beneficial to that youth. It is the same for Human Services in the larger counties, if they have a treatment team. We have to have a contract with every county in order to receive their youth and we are in the process of that. Some of the smaller counties can be placed directly. A Probation Officer or a Human Service Director can make a recommendation that a youth be placed in our facility.

CUSTER: You are going to do your education on site?

KANE: Yes

CUSTER: you are looking at a time frame of the youth being there about ten months. Are you going thru the Colorado Department of Education Charter School or how are you going to be licensed so that these young people can get the credits so they can transfer back?

KANE: The State of Colorado and Human Services require that we use an accredited Colorado on line. We met with BETTY HEISING and she recommended someone to contact.

CUSTER: Will they be getting any services from the South Central Boces?

KANE: I do not know at this time that was discussed.

CUSTER: You are looking at an Educational license and also a Child Care Treatment Facility license from the Colorado Department of Human Services?

KANE: We are looking at a Residential Child Care Facility.

ATTEBERY: One of the letters that the Zoning Director read aloud had some inconsistency with the information that was passed out. It says the Historic Youth Pines Ranch and then it says Historic Pines Boys Ranch. Which one is it? I would like to know the ratio between the boys and the girls.

KANE: It's a typo on my part. It's a Youth Ranch. Ratio wise it will depend on the need. It's more of a housing issue for us. They will not be housed together.

NEPA: Talking about determination at who's at risk, do you decide to terminate a youth that's a risk to the community? How do you interact with the Probation Officers? Do they visit regularly?

KANE: Currently they are allowed to come on site and the Probation Officer transports the youth to our facility or Department of Human Services. We will also offer a transport service that will allow us to bring a youth to the facility and remove a youth.

NEPA: My question would be taken care of immediately.

KANE: Yes, We will see that is taken care of by notifying the Department of Corrections or the Department of Human Services.

NEPA: You said that there is nothing wrong with the septic?

HOBBY: At this time it has been operating as a Dude Ranch and we have had no issues with the septic system at this time.

COKER: I would like to follow up on the waste water and septic system

BARNES: While JACKIE is looking that up let's take another question.

DONLEY: You are currently applying to the State for 32 and what is the process for increasing that number?

KANE: My current application is for 32 youth and if we would increase that number we would have to submit a new application. We will not be allowed to do until we have been in business a year.

DONLEY: What is the number of youth on the County application?

KANE; I don't know if we submitted a number.

DONLEY: It is for 32 youth?

BARNES: I believe I seen somewhere 32 and also 50.

KANE: This is what has happened. We have already had the Department of Human Services go over our facilities and they have already authorized and approved us and it qualifies for 50. Our proposal is for 32.

DONLEY: If you state thirty two on the Special Use Permit and you want to increase that number in a year you will need to come back before us and ask to modify your Special Use Permit. You had better start out asking for fifty youth and if you want to increase that number you would come back before us.

KANE: We have had two meetings and the people in attendance would prefer that we stay at thirty two.

BARNES: We will now go back to ROD COKER'S question about the water and sewer.

HOBBY: JERRY LIVENGOOD from Division II states that they have adequate water for everything that they plan.

COKER: This would be considered a community water system. It would require to have a certified operator and it needs to be licensed by the Department of Public Health as a public water system.

RUSK: We have a certified operator JERRY LIVENGOOD

COKER: As far as the septic system we are going from a seasonal operation to a full time operation. We need to address this. They will need an engineer come in and look at the system and provide something to us and that it is adequate.

RUSK: we have 10,000 square feet of leach field and 5000 gallon holding tank.

COKER: I am not arguing with you about that but we need something besides what you wrote down.

RUSK: Ok we will get that and JERRY LIVENGOOD is our certified operator.

MULLEN: You currently have two operations in Nevada. Are you a corporation or a LLC?

KANE: Yes

MULLEN: Who is the owner?

KANE: I own both with business partners who are not present.

MULLEN: Are you the majority owner.

KANE: No, I own 50 percent and my business partner owns the other 50 percent.

MULLEN: Where is the funding coming from to create this expansion?

KANE: Through our business partners, Myself, KENNY, BRETT and the RUSKS.

MULLEN: It looks like a lease transfer from the limited paper work I have. The existing Historic Pines Ranch, assuming that this SUP is granted by the county. That will then execute a multi year lease with your operation. Your corporation will then take ownership. Then the water and sewer will be taken care of through the existing entity and then when these are taken care of they will float thru on a lease, then you will take over. That is my understanding is that correct?

KANE: Yes

MULLEN: Your application that you provided to us states four individuals and we have listened to three of them. With no disrespect to you this is like a dog and pony show. What you have presented to us is very articulate and knowledgeable people that can comment on the existing facilities. If I had to say what is your position in the organization, you are the CEO?

KANE: I am the Clinical Director.

MULLEN: KENNY ANDERSON, what is his title?

ANDERSON: I am an owner and cofounder.

MULLEN: What about the DEAN and JODI RUSKS?

KANE: Owners and BRETT BELLISTON is an owner as well.

NEPA: Of these four people that are owners who will actually be on site and responsible for this particular operation.

KANE: My name is on the application that went to the Director of Human Services. I will not be on site twenty four seven. There will be Clinical Directors and also KENNY and BRET. We will maintain constant contact via phone call and the RUSKS will be living up there.

COKER: The Clinical Directors will be the people that you hire.

KANE: They will have to have a minimum of a Masters.

BARNES: Any further questions from the Board? We will now take audience questions and comments. We received quite of bit of correspondence and JACKIE is not going to read all of it to us. This morning we were up to 27 responses and now we are up to 35. Anyone that would like to look at this can come to the Planning and Zoning Office. Please limit your question to three minutes and please come up to the podium and state your name.

MARY ELLEN LESAGE: CHRISY your presentation was wonderful. Will you always have a Clinical Director on site?

KANE: Depending on the requirements from the Department of HUMAN Services they do not have to be on site, they need to be reachable via phone to make clinical decisions.

JOHN JOHNSTON: How exactly are you funded by the bed that is occupied? If a juvenile needs to be transferred back out of the system how does that work as part of the funding? Are you paid differently by the level? You had mentioned earlier that the levels are one thru six. If a child has had a previous sex offense but his current offence is shop lifting. Do you have access to his entire record or just the shop lifting offense?

KANE: We receive their full criminal history of a youth and if the sexual offence was five or ten years ago we know about it and they would not be admitted to the program. We are paid the same for every youth that comes into the facility. Every county will have a contract. Typically the youth are on Medicaid and they will be billed.

JAN HILDEBRAND: This is hard for me, DEAN and I have been good friends and we have concerns. We are boarded on three different sides by the Pines Ranch. You talked about runaways and the security system. What will that be guard houses? How will we be notified if there is a runaway? Are there sirens?

KANE: We have a non restraint policy and we will not restrain a runaway. That is our policy at White Pines Boys Ranch and Day Break Equestrian Center. All my staff is required to go through a crisis prevention intervention management in order to place anyone in restraint and it is licensed by the State of Colorado. We are certified to physical restrain the runaways. What we have at White Pines and Day Break are perimeter alarms. If a youth would open a door or a window you would be able to hear the alarm for several miles. The neighbors call up and ask us what is going on and 99 percent of the time a youth opened the window because they thought their room was hot. If there is a runaway we will come up with a policy where the neighbors are notified. All of our youth are required to wear shirts. They will say Historic Pines Youth Ranch and they will be in a certain color. On Sundays they will be allowed to wear their own clothing. If you see a youth with our shirt on they probably belong back at the Ranch. We do not want people to confront them. We would appreciate if you called us and we will go get them.

PAUL RONDEAU and my wife NANCY: We own two of the lots in Pines Village and if I were one of the eight people that was sent a legal notice that this meeting was being held, I would be on the fence, I would have some concerns. I spoke with CHRISTY and she indicated that they would like to teach archery and it is surrounded by 5000 acres of elbow room. They were turned down by some authority. What authority would you envision that you would have to turn down a particular thing like archery? Custer County is laid back and we don't even have building codes and we like that. The second question is you are only accepting certain youth based on their classification. Is there a monitoring system in place and if you exceed that what part does the county play if they allow this SUP? The problem that I have is a huge amount of information and emotion that has been totally ignored. I am a member of the Homeowners Association and a property owner of the Subdivision. We were not officially invited to this because of a strict guideline that JACKIE goes by. We are not adjoining but we are joined at the hips, this is a unique situation. We have an almost intolerable situation of triple whammy. When we want to go to our property we have to drive through the Pines Ranch, possibly female members might make comments, talk is cheap. I think we need a separate entrance that bypasses the Ranch. Secondly, the Pines Ranch has the ability to go through our Subdivision open space and roads to go to the forest. This has been great up until now. It was a Dude Ranch and we have chatted with them. I do not want to deal with youth wondering through. In spite of all PAUL don't worry about this it will never happen, I think we need a legal document stating all our concerns. The other part of this is that we have a single family home adjacent to our property that is being used as a dormitory. Has that been a problem up to now, no. But now we have a whole different situation. Dean has been in charge up until now; he won't even be a spokesperson. It will be another person that is yet to be hired. We have an intolerable situation. Currently the three people that run the Homeowner Association developed the property. Two of those three people are going to be members of the LLC that runs the Dude Ranch. We have been told that will change. Our Association has been trying for over a year to revise our protective conveniences and we can't do it. If that's the case how will we be able to sort out this can of worms. I believe it will take months, maybe years. This situation has not been mentioned by any of the speakers. I take affront to that, it's a serious thing that has to be addressed. Otherwise there will be constant battles and irritations. The sheriff will be called constantly.

BARNES: Thank you. I might be able to help you out on the first question. Typically what happens there, will be conditions attached to the Special Use Permit. You mentioned archery and we encourage applicants to write what they want to do. This is a presentation to work on this and then we have a hearing. Hopefully some of these issues will be addressed.

JOHN MILLER: We are in a similar situation and jointed at the hip. My comments are not to be construed as in favor or against. My question is some sort of oversight. I believe you are considering the oversight from the Zoning aspect of this. My concern is the organization and how it is run. I am a retired State employee worked in corrections about thirty years. Quite frankly I have no trust in State Government. We need local oversight of this operation. The local authorizes need to look at this site annually and hold them accountable.

KANE: All the facilities that are licensed are done by the State and are not subject to the County. I am not saying that maybe that can't be done. All I am saying that we are licensed through the State. I am not opposed to not doing archery, We explained it's with rubber tips. This would give them the opportunity to shoot and we also submitted a proposal for them to get their hunting licenses. We may have a conflict of interest from the State to the County.

BARNES: Will you be having any more meetings with the Homeowners Association?

KANE: I would be willing to have any meetings to answer any questions. I am not sure what the questions were from the gentleman but would be willing to set up a meeting.

RUSK: Can I follow that up, we are open to having an over site committee. We are open to working with this community.

KANE: We can do an over site committee but we are mandated by the State of Colorado and HIPA Laws. Be aware if we do have a committee they cannot come on site unless they have had a background check and cleared by the State of Colorado. There is confidentiality and juvenile records are sealed and are not made public. So if you want to come up and see all the kids, you can't, that is against the law.

HOBBY: As a follow up we can put conditions on your Special Use Permit. We do follow up visits to see if you are complying with the conditions and we accept written complaints. If your complaint was not a Zoning issue we would forward the concern to the appropriate party.

BUTCH GEMIN: JACKIE you answered one of my questions. I am a full time property owner in the adjacent subdivision. I have to respectfully disagree. I do not want to see the landowners write a lot of letters and maybe for the first five years they have an annual inspection from the County. What is the number of private placement versus State placement? In our Homeowners meeting you stated there were State regulations limiting the amount of funding you could get and it did not fit the nine to twelve month residential nature of your facility .Back to the archery issue that was brought up in Nevada. You mentioned that you had a retraction from the Sherriff and if we could get a letter that he did in writing. There was some issues of the Sherriff going out for violent behavior. A clarification you said that in terms of rating it would be threes and fours that you would take but no fives or sixes, then you said you would take fives and that ninety percent would be one to fours.

KANE: Every 90 days we have to submit a psychiatric treatment plan and every 90 days the State reviews that plan and says yes, keep them in this treatment or no, we are going to place them in a lower level of care or higher level of care. On average the youth stay in the facility for ten months. Every 90 days they have a full clinical review with the State of Colorado and our Clinical staff with the Masters degrees. Some youth will be with us six months, some eighteen months. We will take fives on a case by case basis. I can ask the White Pines Sheriff if he will write a statement, I spoke with him on the phone and he said that the White Pines Youth Ranch has had minimal impact on the County. The only request he had is that we notify him sooner if there was a runaway. Our policy was we would contact him after four hours. They would like to be notified after 30 minutes if we cannot find the youth. When we asked to teach archery to the youth we applied for a variance from the State of Nevada. We were denied and they received letters and one of those letters was from the Sherriff Dept. There are guidelines

saying what we can and cannot do and if we want to do something different we have to go to the State and ask.

ELLEN HOPKINS: My husband and I are thirty year property owners and we are within walking distance of the Pines Ranch. I submitted a letter and I will not go and repeat what is in it you have our concerns. I do have a couple of questions. First the brochure which I have not seen. It was mentioned the information was from other Ranches. Were Ranches that similar. Equine Ranches and their therapy programs. I would like to know in the Ranches that you operate what year did those open? How many youths have you actually seen? Also another question is CHRISTY, when did you receive your degree?

KANE: I believe that my Master's Degree is 2002. In our facilities I am going to have to give you a rough number. White Pines Boys Ranch opened its doors in December of 2008. We started the application in January of 2005. The Day Break Equestrian Center opened in January of 2010. Total number served by White Pines Boys Ranch is about 150.

HOPKINS: I would like to say to the Planning Commission that in my mind these facilities have had not a lot of experience. They have only been open a year and a half at the Boys Ranch and eight months at the Day Break Equestrian Center. You are expanding rapidly without the test of time.

BARRY MCBRIDE: My wife and I own four of the original lots in Pines Village. We are less than 200 feet from the Pines Ranch. We are the most impacted and we were not notified. This proposed SUP, they have every intention of using property in the Pines Village Lot 26 will be used as a staff dormitory. Everyone should have been notified. The trails to go up in the National Forrest for therapeutic sessions they will ride the horses right through our subdivision. Any one that shares open space and trails should have been notified. In our case the only access to our property is right through the Historic Pines Ranch. Our water system is shared with the Pines Ranch. Is it a County road or a Private road? We have issues with the whole application process. A lot of affected people do not know this is happening today, they have not been notified. The second thing is we met with this group there are issues. The perimeter sirens, when I asked about it you could hear them four to five miles from the facility. A five mile radius is 78.5 square miles that goes from North Brush Creek down South Taylor Creek and to Beckwith Mountain. That covers 17 different Subdivisions. They will not be in total isolation up there when that siren goes off. When someone opens a window or a door that siren will go off.

KANE: That's if we install it.

MCBRIDE: The permit states that they are only using 187 acres, Pines Village, the open space is about fifty acres and where the other trails go. They also said that they were going to build an indoor horse arena. This is not for charity, it's for profit and mostly at our expense. We have to have all our families travel through this Ranch when they come to visit. They just said that no one could be on the property but we have to drive through every day. The White Pines Boys Ranch has a track record of submitting for waivers not only for the archery or weapons. They also want to reduce the ratio of the amount of staff to youth they also want to eliminate the need for supervised students so they do not have to be supervised. Right now they are licensed to be twenty four hours in the line of site. Once this is approved your actions are out of your hands. There will be a lot of things they can do up there that you will not have any control of. We ask this change, which is very significant. Our property is so close you can see it in their brochure.

BARNES: CHRISTY would you repeat what you said about the sirens.

KANE: A perimeter alarm is installed at White Pines; it does not mean we have to install it here. If that is an issue here we would only have the alarms on the windows and doors.

DARRY STANSBURY: We had the RUSKS come speak to us at our HOA meeting. The more review we have if they want to increase the number of the clientele the better. We understand that the number is 32 youth and if they want to go to 50 that should be a review process. We do not want to jump to a 100 without anyone knowing. We met with the RUSKS and have the greatest intentions we have a teenage daughter that will be home by herself and sometime they will have runaways. Will there be alarms on the windows and doors or video cameras. Is someone sleeping in their rooms? How will we know if this is a requirement? Did they install them, are they working? You can say lots and lots of stuff to appease us but how will we know?

KANE: Part of our licensing is a preliminary inspection and prior to opening we need a final inspection by the Department of Human Services. I will be happy to give you the name of the inspector and anyone can call her at any time. If we are in violation with the State. They can revoke our license at anytime. That is written in our contractual guidelines.

NANCY RONDEAU: Your map there is not telling the truth. You can't see the definition of the Ranch from the Subdivision. If I am walking my dogs on a trail and run into one of your groups what do I do, I am one woman. What will I do if I walk to get my mail that is at the bottom of Pines Road?

KANE: I would hope if you run into our young people you would stop and say hello.

NANCY RONDEAU: Maybe I don't want to.

KANE: Ok, they will be with staff at all times. When they get to our program they know that the next option does not look very good. When they know there are consequences they want to succeed in our program. All our youth are considered polite and courteous. Never has anyone attacked by one of our youth. We do our very best to keep everyone safe.

NANCY RONDEAU: You did not answer my question how many acres is Pines Ranch.

KANE: I believe it is 186 acres.

NANCY RONDEAU: How many acres in Nevada.

KANE: White Pines Ranch is located on seventeen acres and Day Break is six acre.

MARGARET LEWIS: I would like to speak in favor of this. I think that these ranches and programs for youths are the best things. I have a Master in Psychology in the State of Tennessee. I find that most of these problems and concerns at the beginning, these kids are receptive to this. Walking through or driving through the Pines will not be any problem. They will be supervised at all times. If they build an indoor arena that will be great for the equine therapy and I think it's a wonderful, wonderful program.

TERRY PENLAND: I don't think that anything I heard about this and the people up at this podium has been consulted about this at all. They can write letters about the pros and cons and all I smell are my taxes going up. The Sheriff Department would have to expand if this comes in. Right now I do not know how your roads are mine is terrible the Oak Creek Grade is trash. If more people come in then it will tear them up worse. Remember to the Planning Committee there is such a word and that means no.

PAUL RONDEAU: None of my comments were responded to and we need to have a professional mediator. You need to say go back to the drawing board and get this sorted out. The Pines Ranch and the Subdivision are joined at the hip.

BETH MCBRIDE: I wanted to say the comments that my husband and I are making doesn't mean that we do not support this sort of facility. I think we have an unfortunate situation. It is certainly understandable that people would be shy to speak to the youth. It's unfortunate of the geography of this ranch being so close to these Subdivisions.



GERRY DEARBORN: I have a couple of questions. In the ten months that you have been in operation how many times have you called the Sheriff? You haven't been open that long and what is the response time of the Sheriff where you are from? The response time even from Westcliffe or San Isabel would probably be at least an hour. Do your kids come to town and mingle with the other kids from our town? When they turn eighteen you said they can leave. Do you bring them to town and let them out?

KANE: We have been open for almost two years and the Sheriff Department has been called four times, Two times for a runaway and two other times when my staff did not know the protocol and one other time when one of the boys picked up something from the Dentist Office. We are 28 miles from ENID The White Pine County Sheriff Dept to respond to us, it is 28 miles typically it's an hour and forty five minutes for the Sheriff to respond to us. The Sheriff is two hours away, miles from the Day Break Equestrian Center. All my staff is trained in crisis intervention and are authorized to restrain them. In Colorado we are allowed a holding room. So we have the right to put them into this room until we transport them or someone picks them up. Our kids can earn the right to come to town. They can go bowling go to the movies. A main goal at the ranch facility is they are not allowed to go anywhere for two weeks. They come in as a greenie they get all the testing done in the first weeks. Then after that they can become a Junior depending on their behavior. When they reach the top three ranks they can have privileges. Maybe we will take them bowling, white water rafting. On their fifth and six ranking they start to go home and get reintroduced. They go home for four days then come back. To get to those ranks, their behavior has to warrant the privilege. We seek to give them social opportunities like community service. Their behavior has to warrant certain activities. When a youth has graduated from our facilities a probation officer, Department of Human Services, or a parent, comes and picks them up.

JOHN JOHNSTON: I have worked with youth and I am used to these kinds of individuals. My question is to the Planning Commission and the Board of County Commissioners. If you approve this have you turned all your rights over to the State of Colorado?

KANE: I believe that the oversight comes from the State. Maybe one of the conditions would be that we would report to someone. It has never been done in the state of Nevada or Colorado. I am not saying it can't be done.

BARNES: We will have conditions attached to that and they will be enforced at the County level. JACKIE would you please expand on that.

HOBBY: When you deal with State there are a lot of HIPPA laws involved which we are not privy to know. If they had a lot of complaints like noise level, that can be a condition. If you get a Special Use Permit, once you are running we do checks and if we see anything we can call the State. The State usually is pretty good about listening to the County.

KANE: The County Human Services can come on site at any time.

JOHN HART: They were invited to our HOA meeting and they did answer a lot of questions. There will be significant impact on the Pines road and we would like to make sure that you consider this.

BARNES: We appreciate all the comments and we will take them in to account. Are there any more questions from the Planning Commission or the Board of County Commissioners?

BUCKLES: There was a statement from who can be on site.

KANE: Any one can walk by the site but you cannot come in and review the records. That would be a HIPPA violation. Seeing or talking to the youth is not a violation.

BUCKLES: Currently DEAN and JODI are very open to people coming to the facility. What changes?

KANE: Volunteers would need to register to come in and there are regulations. If you stay a certain number of hours you do not have to go through the background check. Department of Human Services does not allow anyone who has a felony work with youth.

BUCKLES: Will there be a point where you check in?

KANE: Yes, Everyone that comes in and is not on staff and wearing a shirt will be required to have a parking pass and visitor badge.

BUCKLES: Obviously if I am walking to my mail box I would not need to do this.

KANE: Correct, you might have a staff member question you about what you are doing. We can't have someone walk on the property. After a certain amount of time this will not be the case. We will be able to recognize the people.

BUCKLES: When a Subdivision designates open space is that to the owners of the Subdivision or anyone like the public at large.

HOBBY: I will need to see the Pines Village Plat Map to see who the open space is dedicated to.

NEPA: Before we go on any further we need a copy of the application to the State and we need to see what conditions they have.

BARNES: As far as the applications, have you submitted those to the office?

KANE: The application contains a lot of confidentially, financial information that you cannot see. I can send you a website so that you can see the questions that we are being asked.

COKER: I would like to see an overlay map with the Subdivisions on it.

HOBBY: My recommendation is prior to the October meeting we have a workshop with the applicants and questions that we received and nail down some answers. This is the first time I have heard archery and you need to cover everthing possible in this application so that you do not have to come back and ask again.

KANE: We would be happy to do that.

BARNES: You can coordinate with the Zoning Office.

MULLEN: Along with the workshop an on Site tour would be beneficial.

BARNES: Thanks to everyone

CUSTER: I move that we adjourn the County Commissioner meeting

ATTEBERY: Seconded the motion

BARNES: Moved to adjourn

NEPA: Seconded the motion

Meeting adjourned at 5:45 P.M.