



~ Minutes ~  
Draft  
For a Regular Meeting of the  
**PLANNING COMMISSION**

1101 East 2nd Ave  
Durango, CO 81301  
<http://co.laplata.co.us>

**Thursday, March 3, 2016**

**6:00 PM**

**County Board Room**

These are abbreviated minutes. The official record of this meeting is the audio file, available via the La Plata County web site <http://co.laplata.co.us> . For a CD of the audio file for a specific meeting, please contact the Clerk to the Board Allison Kardas, at (970) 382.6263 or via e-mail at [Allison.kardas@co.laplata.co.us](mailto:Allison.kardas@co.laplata.co.us). There may be a charge for the recording.

**I. Call to Order**

<b>Attendee Name</b>	<b>Present</b>	<b>Absent</b>	<b>Late</b>	<b>Arrived</b>
Tom Gorton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Jim Tencza	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Lucy Baizel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Charly Minkler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Geri Malandra	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**II. Approval of Agenda**

*Community Development Director Damian Peduto requested the GCC Land Use Permit continuance be added to the action item section of the agenda.*

*There was no objection from the commissioners and the change was made.*

**III. Approval of Minutes**

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>AYES:</b>	Gorton, Tencza, Baizel, Minkler, Malandra

1. Planning Commission - Regular Meeting - Jan 14, 2016 6:00 PM
2. Planning Commission - Regular Meeting - Jan 28, 2016 6:00 PM
3. Planning Commission - Regular Meeting - Feb 4, 2016 6:00 PM

**Public Hearing of the following requests:**

**IV. Other Business**

1. PROJECT #2015-0010, 2001 Comprehensive Plan Update

The Planning Commission will continue updating the Land Use Element of the Comprehensive Plan. The public is encouraged to attend and provide input.

Staff: Damian Peduto

*Community Development Director Damian Peduto introduced project 2015-0010 Comprehensive Plan Update. He began by saying the staff has incorporated the suggestions of the Commissioners into the Land Use Element of the Comprehensive Plan.*

*Commissioner Malandra said she has editorial tweaks that she will provide to the staff in writing.*

*Mr. Peduto went over the changes the staff made to the Element. The staff changed the word "considerately" in its various locations in the document. He presented the maps the GIS staff created and Planning staff incorporated into the Element.*

*Chairman Tencza asked for a citation to the Colorado Revised Statute 30-28-101, which defines "Cluster Development" and other terms, to be included in the District Land Use Plans Section. Mr. Peduto said yes the staff can incorporate the citation.*

*Chairman Tencza opened the meeting to the public.*

**Greg Hoch, Community Development Director for the City of Durango.** He said he would like to work with the County planning staff to converge the community planning processes. The City will begin to update their Comprehensive Plan in May. He said the planning process for the City is different because the City provides utilities and services. They utilize projected land use maps and calculate the anticipated utility use in those areas. Their Plan references the County in many of their policies, the City planning staff is going to compile a list of the policies and provide it to the staff so they can work together to refine the way the Plans work together. He said the County's Comprehensive Plan includes policies such as 1.1.B1, 1.1.B3, and 1.1.B4 which have direct effects on the municipalities and their ability to provide services.

He said the County should be able to deliver urban services to the medium density developments that they place closer to municipal areas according to Policy 1.1.B1.

Chairman Tencza asked Mr. Hoch to let the staff know when their Comprehensive Plan update will be in public meeting so the staff and Commissioners can attend.

Commissioner Malandra asked if the County and City have different definitions for the levels of density. Commissioners and Mr. Hoch affirmed that they are different.

**Daniel Patterson, 4186 County Road 240, Durango Colorado.** He is a supervisor at Rocky Mountain Tiny Homes, he said the housing market is changing, tiny houses are becoming popular. He said the new options of housing development allow for affordable housing but there is not clear policy regarding their development.

Commissioner Minkler asked him to define a tiny house. Mr. Madison said there are houses built on trailers 8' by 24' that are mobile to 250-600 square foot stationary houses. He said the municipal Codes around Colorado do not allow for these lot sizes or house sizes.

The Commission asked Mr. Madison to provide them with information so they can be educated before taking on the Housing Element.

Mr. Peduto addressed Mr. Madison saying there is a building code amendment going through the County Building Department right now.

*These houses differentiate from all the different regulations in the Code. The County is different because it considers everything that can be lived in a dwelling unit, including an RV. He added that tiny houses have not been defined differently.*

*Chairman Tencza closed public comment.*

*Chairman Tencza called a recess until 7:25 when the hearing for the GCC continuance would begin.*

<b>RESULT:</b>	<b>CONTINUED TO DATE CERTAIN</b>
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<b>Next: 4/7/2016 6:00 PM</b>
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## **V. Action Items**

1. PROJECT #2012-0089, GCC ENERGY KING II COAL MINE CLASS II, CONTINUANCE

Owner/Applicant: GCC Energy, LLC / Trent Peterson

Agent: Brian Kimmel, Southwest Land Services

As continued from the March 3, 2016 Planning Commission hearing, consideration of the GCC Energy Class II land use permit for an existing coal mine operation comprised of surface facilities, underground mining, and coal hauling. Address is 6473 CR 120 located on APN 5653-362-00-077.

Staff: Daniel Murray, Victoria Schmitt, Damian Peduto

*Chairman Tencza reconvened the meeting at 7:30 and opened Project #2012-0089 GCC Energy King II Coal Mine Class II, Continuance.*

*La Plata County councilor Sheryl Rodgers said the staff and GCC had discussions today about the state of the Road Improvement Agreement. The County has technical and legal issues with the proposed agreement but the County is working with the applicant. The attorneys for the public expressed concern that their clients were not present for the discussion. She introduced a letter from Mr. Robbins, expressing the concerns of their clients to the record. It was accepted to the record as Exhibit 7.*

*Senior Planner Daniel Murray played videos from the public that the Commissioners were not able to view previously because of technical issues.*

*Chairman Tenzca officially accepted the documents from the applicant that were tentatively accepted at the meeting March 2.*

*Chairman Tenzca opened the project to discussion by the Commissioners.*

*Commissioner Malandra asked for reiteration of the County's recommendation and asked what would happen if the Commission voted for denial. Mrs. Rodgers said the Commission can vote for denial or they can vote for a continuance with conditions, in either case the Board of County Commissioner will have the chance to review the project. It is possible that the staff recommendation could change from denial to approval in the case that the Road Improvement Agreement was finalized. In this instance, the Board of County Commissioners could return the project back to the Planning Commission for review. The Commissioners discussed the possible processes the project could go through.*

*Chairman Tencza reminded the Commissioners that the applicant still has the option of resubmitting the application. Commissioner Gorton asked if the submission would require the applicant to get new comments from all of the agencies. Mr. Peduto said the application would have to go through the entire process.*

*Councilor Rodgers said she would like to say the Road Improvement Agreement is an agreement between the Board of County Commissioners and the applicant and the most expeditious way would be for the Road Improvement Agreement to be agreed up on before the Board of County Commissioners hears the applicant's project.*

*Chairman Tencza asked if the Road Improvement Agreement the Commission has in their packet has been commented on by GCC. Mrs. Rodgers said the agreement in the packet is the preliminary write up and GCC provided a red-line version of the agreement after the staff recommendation was published.*

*Chairman Tencza mentioned the Performance and Warranty Bond in the agreement and said that is an extensive provision that protects the County and Public in the instance GCC does not fulfill the agreement. He mentioned that the County has the opportunity to obtain a grant to assist with the road improvements as well. Mrs. Rodgers said the agreement contains provision that states the County will put reasonable effort into obtaining energy impact grants.*

*Chairman Tencza said he found the instance in the agreement that mentions eminent domain, he said it is the third option on the list of ways to obtain the property and he believes that is an issue.*

*Chairman Tencza asked if the statement "in the event future federal agency actions render the improvements unnecessary the road improvement agreement and or land use permit could be amended to accommodate such changes at that time" means GCC will have an outlet. Mrs. Rodgers said the applicable legal standards require road improvements only in the instance of activity occurring on the property, if the activity were to cease GCC could approach the County with an amendment to the agreement. Chairman Tencza clarified that the company would not be on the hook for the road improvements if the coal mining were to stop.*

*Chairman Tencza asked, if the road improvement completion dates are exceeded, does the County have the right to go against the bond and complete the improvements themselves. Mrs. Rodgers reviewed the bond coverage the County requires and said if GCC does not complete the work by the due date the County reserves the right to order the bond holder to do the work, or the County can complete it. Chairman Tencza said that the bonds would guarantee to the land owners that the roads would get done even if GCC fails to complete the improvements.*

*Chairman Tencza asked the applicant to present their rebuttal to the Planning Commission.*

*Carolynne White, Land Use Council for the applicant presented GCC's rebuttal to the Commission. She requested "Construction Schedule for CR 120 Road Improvements" be entered into the record. It was accepted as Exhibit 9. She requested the red lined version of the Construction schedule be entered into the record. It was accepted at Exhibit 10.*

*Ms. White said GCC has met with County staff to better understand the concerns with the Road Improvement Agreement. She said GCC has withdrawn their objections to staff's proposal and they are willing to agree to all of staff's language in the Road Improvement Agreement. She gave reasoning for the different issues GCC had with the agreement. She said the only outstanding disagreement is the amount of trucks GCC is allowed to have on the roadway during the road improvements.*

*Ms. White said GCC does not dispute the neighbor's claim that the road does not function well in its current condition for the number of trucks utilizing the road. She said the improvements will take time and presented the road improvement phases. She said GCC believes they should be subject to the same negotiation procedures with the surrounding land owners as all other developers in the County are. She said GCC hopes to and will use all reasonable efforts to negotiate the right of way with the land owners before resorting to eminent domain.*

*Ms. White said GCC should be able to operate at full capacity when the road improvements are complete, because they will be in compliance with Code and the Comprehensive Plan.*

*Mrs. Rodgers asked Ms. White if the acceptance of all of the legal terms in the Road Improvement Agreement is contingent on the truck numbers the applicant has suggested. Ms. White said it would be desirable but it would not matter because GCC cannot operate without the higher truck numbers.*

*Chairman Tenzca asked if GCC is making progress on the CDOT access permit. Trent Peterson, 6473 CR 120, Hesperus. Mr. Peterson said GCC has agreed to move forward with the CDOT improvements and they will have a Notice to Proceed in July.*

*Commissioner Minkler asked why there are no road improvements scheduled to happen in 2018 and said the process is being dragged out. Ms. Rodgers said there will be activity happening, such as engineering and designing, but not active construction. Chairman Tencza asked why more of the construction is not happening concurrently. Mike Olson, 2610 Arroyo Drive, Durango. He said there is some overlap, and there could be more. He said the improvements could be accelerated but they do not want to put a schedule forward that would not be attainable.*

*Commissioner Minkler said everyone hates road construction and stretching it out for 5 years seems like more misery. Mr. Olson said the portion of the roadway that will be completed last is the portion that is least traveled.*

*Commissioner Gorton said the new proposal seems to differ only in the way that the company can run 100 trucks during all phases on construction rather than 80 during the first two phases. Ms. White said yes Commissioner Gorton is correct, there is no scenario in which GCC can*

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*continue to operate with only 80 trucks. She said they are trying to escalate the most important road improvements.*

*Chairman Tencza asked for clarification on the eminent domain process. Councilor Rodgers said she has been representing the county for 18 years and has only invoked eminent domain in one instance. The reason the County would invoke eminent domain is because there cannot be a scenario where property owners ask for the moon and it is impossible for the company to perform. She said generally the end offer is higher than fair market value but to keep in mind it is atypical for the County.*

*Chairman Tencza asked how many properties might be affected. Daniel Murray, Senior Planner with La Plata County Planning Department, said there are 25 drive ways along the corridor. He asked the Chairman for permission to provide clarity on some other questions. He said the applicant deserves credit for coming to agreement with many of the terms in the construction schedule. He said the Commission should be considering the appropriate number they believe will be compatible (100 vs. 80 vs. 55) But the only question they have to answer tonight is do they want the project to come back before them. He said if that is the case, continue the project.*

*La Plata County Community Development Director Damian Peduto said this is new evidence and the staff does need an opportunity to respond to it. He said a decision tonight would be based on information that the staff has not been able to analyze against the Code.*

*Chairman Tencza asked Luke Danielson, Land Use Council for Cross Creek Ranch what he would like to say to the Commission. Mr. Danielson said that the evidence is new and the public has not had time to review the proposal. Chairman Tencza asked Mr. Robbins if he had any questions for the Commission and he said no.*

*Chairman Tencza asked the Commissioners for their thoughts.*

*Commissioner Baizel said she felt like last nights hearing was filibustered. She said the lack of action by all of the parties was an action which created the filibuster and required the Commission to reconvene. She said time was wasted that could have been spent on salient issues such as compatibility with the Fort Lewis Mesa District Plan. She said she would argue that if GCC was such a great employer they would not have ramped up production, hiring new employees, outside of County guidelines. She*

*said County staff should have realized that GCC was stalling. She said it does not matter what the Commission decides tonight, someone is going to sue and she gave a list of the things she wishes could be achieved today.*

*Commissioner Gorton said this is an extremely difficult decision. The charge of the Commission is to look after the best interest of the community and what the Commission needs to do is try and strike a balance between the quality of life and the well being of the people who live here. He said he agrees that the Commission cannot disregard the Code because they think the project is economically important but the Commission does consider economics. He said he believes GCC has acted in good faith, it is represented in the volumes of studies and reports that have been submitted. He said he is disappointed that GCC made last minute concessions because it put the Commission in a very awkward position. He said he is greatly encouraged that the parties seem so close to coming to an agreement but he believes the best outcome will come from a continuance so the parties can come to an agreement. He said it needs to be considered that the mine is an important part of the community, the Code is fairly subjective, and 100 trucks might be compatible during construction.*

*Commissioner Minkler said he left the meeting last night with the thought, he would love to work for GCC but would hate to be their neighbor. He said given the time it has taken to get to this point he was prepared to recommend denial, he would now like to recommend a continuance with the shortest time possible.*

*Commissioner Malandra said the responsibility of the Commission is to balance the needs of the stakeholders in the community. She agrees that the proposal as presented to the Commissioners at the beginning of the consideration was not compliant. She said after the testimony, it would seem on the surface the whole project is being held up by 20 trucks. She said she is reluctant to believe that is all there is, given the amount of work that has been put into this project and she suspects there is more to it. She asked what leeway the Commission has in setting parameters for the future discussion to ensure there will be a Road Improvement Agreement if the Commission sees the project again.*

*Chairman Tencza said the Commission works very hard to represent the residents of the County. He said this is not a rubber stamp commission, they are very thoughtful, they have a lot of experience, and they really work and feel for the job. He said the worst nightmare of a Planning Commissioner is when a business is so successful that it negatively*

*affects the quality of life of the community. When this happens the Commissioners are asked who is more important, the employees or the neighbors and they have to find a balance between the two. He said he also came ready to deny because the report and the work product does not comply with what he believes would bring balance. He said there has to be provisions to protect the quality of life for the neighbors. He asked what would be the shortest route for getting the project approved and the Commissioners and Mrs. Rodgers discussed the possibilities. He said if they can be assured there will not be another continuance so they can come to an agreement that provides relative balance between the County, GCC and the neighbors he would recommend a continuance.*

*Commissioner Gorton said the best outcome, while getting the most input, would be to continue. He said he believes the Board of County Commissioners would want to have the Planning Commission review the Road Improvement Agreement before they would approve it. Commissioner Baizel said because the Agreement is between the Board and GCC it seems like the Board would have seen it before the hearing. Commissioner Gorton said to deny and let it move forward to the Board would be leaving many loose ends in the agreement that need to be fixed.*

*Mrs. Rodgers said she would suggest the motion contain a dead line for the discussions to be concluded that would allow the staff time to write the agenda and meet publishing deadlines. The parties discussed the deadline and came to an agreement that the Road Improvement Agreement must be complete by March 17, 2016.*

*Commissioner Gorton moved to continue Project 2012-0089 GCC Energy King II Coal Mine Class II, Continuance to date certain of April 14, 2016 with a provision that all negotiations with GCC Energy and the other stakeholders relative to the Road Impact Agreement are completed by no later than March 17, 2016.*

*Commissioner Malandra seconded the motion as stated.*

*Chairman Tencza said the project is being continued, it is expected the staff and the applicant come to an agreement by March 17, and staff provides the opponents copies of the agreement.*

<b>RESULT:</b>	<b>CONTINUED TO DATE CERTAIN [4 TO 1]</b>
	<b>Next: 4/14/2016 6:00 PM</b>
<b>MOVER:</b>	Tom Gorton, Commissioner
<b>SECONDER:</b>	Geri Malandra, Commissioner
<b>AYES:</b>	Tom Gorton, Jim Tencza, Charly Minkler, Geri Malandra
<b>NAYS:</b>	Lucy Baizel

## **VI. Adjournment**

The meeting was closed at 9:16 AM

Chairman Tencza entertained a motion to adjourn. Commissioner Minkler moved to adjourn and the meeting was adjourned at 9:16.