

MINUTES

COLORADO DIVISION OF REAL ESTATE

CONSERVATION EASEMENT OVERSIGHT COMMISSION MEETING SEPTEMBER 21 , 2009

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MINUTES
CONSERVATION EASEMENT OVERSIGHT
COMMISSION MEETING

September 21, 2009
Colorado Division of Real Estate
1560 Broadway, Suite 925
Denver, CO 80202

A Conservation Easement Oversight Commission public meeting was held on June 15, 2009. The commissioners in attendance were Cindy Lair, representing the Colorado Department of Agriculture; Martha Cochran, representing a local land trust; Dan Pike, representing a statewide land trust; R. Jay Winner, representing a local government land conservation agency; Janis Whisman, representing a historic preservation organization with experience in easements on properties of historical significance; Mark Weston, representing certified general appraisers; and Max Vezzani, representing landowners who have donated a conservation easement. Lise Aangeenbrug, representing Great Outdoors Colorado, and Doug Robotham, representing the Colorado Department of Natural Resources, were absent. Also attending were Erin Toll, Executive Director; Marcia Waters, Director of Compliance and Investigations; Hollis Glenn, Conservation Easement Program Manager; Lisa Brenner Freimann, Assistant Attorney General; Terry Phillips, Department of Revenue; Ted Waitr, Department of Revenue; and several members of the Division's staff. The meeting was open to the public and several people attended.

Full and timely notice of the meeting was given to the public and the meeting was held pursuant to the Colorado Sunshine Law, Title 24, Article 6, C.R.S., as amended.

The meeting was called to order by Chair Pike at 1:04 PM.

Approval of June 15, 2009 Minutes:

It was moved by Commissioner Whisman and seconded by Vice Chair Cochran to approve the minutes of June 15, 2009 meeting as written.

Motion unanimously carried.

Update on notification regarding the appraisal review:

Hollis Glenn reported that the staff continues to explore the possibility of developing a notification process regarding the appraisals submitted to the Division of Real Estate. He stated the possibility of a notification process would focus on notifying the appraiser rather than the landowner.

Update on the state oversight of tax credits:

Hollis Glenn mentioned since the last CEOC meeting the staff has not had a chance to explore the issue of state oversight of the tax credits. He further pointed out that while this was an agenda topic at the previous CEOC meeting, the discussion remained open without a clear action item for the staff and Commission. Hollis Glenn asked the Commission if this topic could be delayed until the next CEOC meeting when the Commission would have more time to discuss.

Commissioner Weston asked if it would be possible to designate a subcommittee from the Commission to discuss the issues.

Update on recent talk regarding a moratorium of the tax credit

Hollis Glenn updated the Commission about recent talk regarding a moratorium on the conservation easement tax credit program. As a testament that the legislation is working, Hollis presented two charts which depict the effect HB08-1353 has had on extinguishing the questionable transaction that appeared in 2000-2006. The charts also depicts how two land trusts responsible for facilitating the majority of the tax credits elected not to be certified. Chairman Pike indicated that the information depicted in the chart has been helpful in explanation to the legislature. He further pointed out the graphs indicate a cooling effect on the tax credit program.

In addition, the DRE is working on a memo highlighting the impact a moratorium would have on the conservation efforts in the state. Director Toll pointed out that a moratorium would not necessarily have an impact on savings since there are still unclaimed credits which be carried forward. Also, the impact of a moratorium would prevent the conservation easement oversight program, DRE and DOR staff from addressing pre-1353 issues.

Staff will continue to keep the Commission apprised of any developments about a moratorium

Pre 1353 conservation easements findings:

Terry Phillips from the Department of Revenue briefed the Commission on the initial results of DOR's review into pre-1353 easements. The DOR gathered data from three independent sources: county records, Farm Credit Agencies' data on agricultural sales, and an independent appraiser hired by the DOR to produce full appraisals. All three data sources provided the same price/acre for a particular area of concentration. Terry provided graphs depicting the results for a small sample of easements in Bent and Prowers County. Both graphs indicate a significant difference between the value of the original appraisals and the value supported by the independent sources above. Terry indicated because the difference in value is so significant, sorting these easements based on gross and substantial misstatements of value (200 % and 400%) would not work for a vast majority of easements which the DOR has reviewed and will reject.

The Commission commented on some confusion on the graphs between conservation values and price/acre. The suggestion was made to distinguish the information on the graphs more clearly before giving it to the public.

Conservation easement appraisal workgroup

Hollis Glenn provided an update on the one-day appraisal taskforce meeting to address common questions conservation easement appraisers have about the submission process. The Division will be posting FAQs to the website as a result of the meeting. In addition, the Division will begin to accept electronic appraisal submissions.

Initial Discussion on Phasing

Hollis Glenn asked the Commission to begin an initial dialogue about easement phasing which will continue in future meetings. Division staff is concerned about the practice of phasing easements and wanted to get the Commission opinion on the issue. Hollis Glenn asked the Commission on whether there Commissioners felt there was abuse of the practice.

Comments by Commissioners:

Commissioner Winner: Need to be parameters based on acreage. He described a situation where landowner tried to place 80 easements each 18 acres.

Vice-Chair Cochran: Phasing is a really tough issue, but the concern about phasing parameters needs to be based on the equity (value) in the property rather than size. There are many areas in the state with high equity and small acreage.

Commission Whisman: Agrees with Vice-Chair Cochran. In certain areas in Colorado the value of the land is so expensive you don't have enough local tax dollars to complete the entire deal. It would be hard to come up with a standard or parameters that can be applied across the state.

Commissioner Weston: Phasing is a pit fall for appraisers and can be really complicated to appraise.

Commission Vezzani: The annual limit of the tax credit drives the phasing. If phasing was disallowed there would be a preclusion of high value easements. However, there is lots of give and take and arm twisting between the land trust and the landowner regarding the number of phases vs. the amount (size) of the donation.

Chair Pike: One reason why the tax credit was raised from \$260K to \$375K was to deter the amount of easements being phased.

Commission Lair: From a tax payers perspective there seems some kind of limit may be needed because of the possible loss of revenue. There needs to be some balance, however, the question arises as to who defines that balance between demand and the loss of revenue. There may need to be a limit of tax credits that we are going to allow each year.

Hollis Glenn mentioned the staff is noticing land being phased in the same year through multiple LLCs with the same signatory.

PROCEDURES TO REAPPLY/DISCUSSION REGARDING THE CERTIFICATION REVIEW PROCESS

Hollis Glenn asked the commission to begin to think about a procedure to reapply if a land trust is denied certification. He commented this procedure should be in place before certification goes into effect so land trusts who are denied will know the options.

Commissioner Aangeenbrug inquired if there is a possibility of conditional approval. Hollis stated that based on the guidance from the Commission's previous counsel, the statute directs the Commission to make a recommendation before a final decision to grant or deny certification made by the Division. The statute does not directly allow for a conditional approval, but a conditional approval could be identified in the procedures to reapply.

Hollis Glenn discussed the process in which the application reports will be presented to the Commission for their recommendation. Because of the sensitive nature, discussion of these applicants will be done anonymously. The investigator (Jordan Beezley) will be available to answer any questions the Commission might have about a report. Hollis outlined the evaluation criteria found on the first page of each report and explained the classifications: *Strong Response*, *Area for Improvement*, *Concern*, and *Critical Concern*. These were merely recommendations provided by staff and meant to provide a basis for which the Commission can make a decision on their recommendation to approve or deny certification.

Commissioner Weston inquired whether a commissioner may consider information they may know about a land trust that is not part of the application. Hollis Glenn stated that he believed the Commission's decision should be based on the material presented from the application and if any individual, including a member of the Commission, wants to place a complaint with the Division of Real Estate, the Division will investigate. Lisa Brenner stated that the Commissioner has the authority to consider outside information, but whether they should or not is up to the individual Commissioner.

The Commission concluded they will not consider whether the applicant has a contingency plan since the contingency plan is not required by rule A-1.

PUBLIC COMMENT

There was no public comment.

APPLICATION REVIEW

Applicant 200901

Vice-Chair Cochran recused herself from the discussion, the vote and left the room. The report was presented to the Commission and a discussion ensued. This applicant elected to go through the expedited process for certification. It was motioned by Commissioner Weston and seconded by Commissioner Lair to recommend approving this organization for certification.

Motion unanimously carried.

Vice-Chair Cochran returned to the room.

Applicant 200902

The report was presented to the Commission and a discussion ensued. Commissioners were concerned about the number of missed monitoring dates by the applicant. Discussion on this applicant was tabled for the end of the application review. (See comments below)

Applicant 200903

The report was presented to the Commission and a discussion ensued. This applicant elected to go through the expedited process for certification. It was motioned by Commissioner Weston and seconded by Commissioner Lair to recommend approving this organization for certification.

Motion unanimously carried.

Applicant 200904

Chair Pike recused himself from the discussion and the vote and left the room. The report was presented to the Commission and a discussion ensued. This applicant elected to go through the expedited process for certification. It was motioned by Commissioner Whisman and seconded by Commissioner Weston to recommend approving this organization for certification.

Motion unanimously carried.

Chair Pike returned to the room.

Applicant 200907

The report was presented to the Commission and a discussion ensued. Commissioner Weston indicated a previous relationship with this applicant, however believed he would be able to make an impartial decision. It was motioned by Vice-Chair Cochran and seconded by Commissioner Lair to recommend approving this organization for certification.

Motion unanimously carried.

Commissioner Robotham left the room.

Applicant 200909, 200913, and 200921

The reports were presented to the Commission and a discussion ensued. These applicants elected to go through the expedited process for certification. It was motioned by Commissioner Weston and seconded by Commissioner Vezanni to recommend approving these organizations for certification.

Motion unanimously carried.

Applicant 200916

The report was presented to the Commission and a discussion ensued. Chair Pike indicated a previous relationship with this applicant, However, he believed he would be able to make a

impartial decision. It was motioned by Commissioner Weston and seconded by Commissioner Whisman to recommend approving this organization for certification.

Motion unanimously carried.

Commissioner Robotham returned to the room.

Applicant 200925

The report was presented to the Commission and a discussion ensued. Commissioner Whisman indicated a previous relationship with this applicant. However, she believed she would be able to make an impartial decision. It was motioned by Commissioner Weston and seconded by Commissioner Whisman to recommend approving this organization for certification.

Motion unanimously carried.

Commissioner Lair left the meeting.

Return to applicant 200902

Commissioner Whisman inquired if the Commission can defer a decision until a later meeting. Hollis Glenn stated that the Commission can direct staff to gather and provide the Commission additional information in order for the Commission to make their recommendation to approve or deny an applicant. Further discussion focused on the missing monitoring dates, the monitoring done by the landowner, and the organization's president providing their legal review. It was motioned by Commissioner Aangeenbrug and seconded by Commissioner Weston to recommend approving this organization for certification.

Commissioner Weston, Whisman, Winner, and Cochran opposed the motion.

Motion Failed.

It was motioned by Commissioner Aangeenbrug and seconded by Commissioner Vezzani to defer final recommendation until staff can gather additional information about the applicant's monitoring activity for 2009.

Motion unanimously carried.

Adjournment:

It was moved by Commissioner Whisman and seconded by Commissioner Weston to adjourn the meeting.

Motion unanimously carried.

The Conservation Easement Oversight Commission meeting adjourned at 3:15 PM on June 15, 2009.

Lisa Aangeenbrug, Great Outdoors
Colorado

Doug Robotham, Colorado Department of
Natural Resources

Cindy Lair, Colorado Department of
Agriculture

Martha Cochran, Commissioner

Dan Pike, Commissioner

R. Jay Winner, Commissioner

Janis Whisman, Commissioner

Mark Weston, Commissioner

Max Vezzani, Commissioner

Erin Toll, Director
Colorado Division of Real Estate