

MINUTES
COLORADO DIVISION OF REAL ESTATE
CONSERVATION EASEMENT OVERSIGHT
COMMISSION MEETING
JANUARY 25, 2010

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MINUTES
CONSERVATION EASEMENT OVERSIGHT
COMMISSION MEETING

January 25, 2010
Colorado Division of Real Estate
1560 Broadway, Suite 1250 C
Denver, CO 80202

A Conservation Easement Oversight Commission public meeting was held on January 25, 2010. 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; 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 Marcia Waters, Director of Compliance and Investigations; Hollis Glenn, Conservation Easement Program Manager; Lisa Brenner Freimann, Assistant Attorney General; Chris Muntean, Department of Revenue; Ted Wiatr, 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.

Call to order, determination of a quorum:

The meeting was called to order by Chair Pike at 1:03 PM and a quorum was determined.

Approval of December 14, 2010 Minutes:

Motion: It was moved by Commissioner Whisman and seconded by Commissioner Weston to approve the minutes of December 14, 2010.

Motion unanimously carried.

State oversight into transferring the tax credits:

Commissioner Lair provided the Commission with a PowerPoint handout on how a state brokerage could be implemented. The focus of the handout involved the review of donations and the brokerage of the actual tax credit. Specifically, the handout addressed the operational and financial details of implementing the program, the need to guarantee the donation in order for the

state to broker the tax credit (including setting up a 5% reserve fund) and the potential cost savings for a landowner. Commissioner Lair requested the opinion of the Commission on the idea.

Hollis Glenn summarized the taskforce meeting that was held earlier in the month to explore the issue. At that meeting three general issues were identified: 1) the continued need to provide assurances and financial benefit to landowners 2) the legislative and fiscal obstacles of a new program, and 3) the liability for the state to certify a transaction.

The Commission's discussion revealed the following comments and questions:

- 1) What would be the discount benefit to the buyers/sellers? (80%-95%)
- 2) How would the state indemnify and handle "high risk deals?"
- 3) What would be the impact on private industry, such as tax credit brokers?
- 4) Could private brokers be used or become certified?
- 5) It is important to avoid a bottleneck in the review process.
- 6) What state agency would run the program?
- 7) This program can help the state monitor the tax credit with greater transparency.
- 8) The DOR would be happy with an endorsement of the appraisal, but a guarantee could be problematic until there is an actual audit of the tax return.
- 9) There are tools already available through HB08-1353 that can be used to address some of these concerns.
- 10) Good idea, but bad timing might make it difficult to implement right now through legislation.

Vice-Chair Cochran, Hollis Glenn and Marcia Waters will meet to discuss possible ways in which the Commission and Division can provide assurance to landowners under current conservation easement statutes and Division policies.

Motion: It was motioned by Commissioner Whisman and seconded by Commissioner Winner that the Commission be in favor of, and direct staff to continue, exploring ways to preserve a greater portion of the tax credit to the landowner and provide more assurance to landowners regarding their donation, which could include but would not be limited to Commissioner Lair's proposal.

Motion unanimously carried.

Department of revenue update:

Ted Wiatr provided the commission an overall update from the Department of Revenue (the DOR) and was available to answer the Commission's questions. All taxpayers that mistakenly received a deficiency letter from the DOR have been contacted and the matter is largely resolved. The Department of Revenue has noticed a huge decrease in the number of tax credits disallowed since 2008 (Post HB-1353). The DOR is still reviewing transactions.

Proposal for an appraiser update course:

Hollis Glenn asked the Commission to discuss and make a recommendation on whether the Division should develop an appraiser update course. HB08-1353 contemplates establishing educational requirements for anyone appraising conservation easements for a tax credit. Appraisers would be required to take this update course once every other year. The Division would like to design an eight hour course that will cover specific issues relating to conservation easement appraisals in Colorado. If approved, the Division's first step will be to form a temporary education taskforce to design the curriculum.

Motion: It was motioned by Commissioner Whisman and seconded by Vice-Chair Cochran that the Commission support the concept of an update course and recommend that Division staff present the concept to the Board of Real Estate Appraisers for their support.

Motion unanimously carried.

Review of proposed rules:

Hollis Glenn presented rules A-2 through A-5, and D-1 and D-2 to the Commission for comment. A hearing for these rules will be held before the May 17th meeting. The A- rules define certain parameters for state certification; namely the expiration date and the deadlines for a holder to renew and reinstate their certification. The D-rules would prevent any easement holder from co-holding or transferring easement to an entity that is not certified.

Commissioner Lair recommended that the fee to reinstate an expired certification license be more than the fee to renew a certification license to provide an incentive for holders to renew their license on time.

Commissioner Whisman was concerned the D-rules could become problematic for local government agencies that have intergovernmental agreements that require both agencies to hold the conservation easement. Some of those local governments will not be certified.

Motion: It was motioned by Commissioner Whisman and seconded by Commissioner Weston to seek legal clarification and applicability for intergovernmental agreements before proceeding further on the D-rules.

Motion unanimously carried.

Further comments on the rules may be emailed to Hollis Glenn before May 17, 2010.

Summary of findings from land trust certification

Jordan Beezley presented a detailed analysis of the Division's findings from certifying land trusts. The report highlights common areas of strength, concerns, and areas for general improvement. This report will be available for the public so any land trust may use this information to make overall improvements. This report will also be presented at the CCLT conference.

Public Comment:

There was no public comment.

Application Review:

Applicant 200908

The reports were presented to the Commission and a discussion ensued.

Motion: It was motioned by Commissioner Winner and seconded by Commissioner Lair to recommend approving the organization for certification.

Motion unanimously carried.

Additional Recommendation:

Commissioner Lair requested the staff and Commission begin to address the subject of orphan easements.

Adjournment:

Motion: It was moved by Chair Pike and seconded by Commissioner Weston to adjourn the meeting.

Motion unanimously carried.

The Conservation Easement Oversight Commission meeting adjourned at 3:15 PM on January 25, 2010.

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