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County Commissioners
Custer County Colorado
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16 Mar 2008

Dear Commissioners:

We are writing because it became clear during our 4 Mar 08 meeting that a serious misunderstanding about conflict of interest, recusal, pre-decision, and attending public meetings exists. The purpose of this letter is to offer clarification.

You inappropriately and incorrectly used conflict of interest as justification to disqualify us as C4 members from serving as associates. Colorado Revised Statue §24-18-108.5 is clear in saying that a member of a board who receives no compensation "shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest." Neither of us gain economic benefit in any manner because of our involvement in C4. Although we certainly have an "interest", we just as certainly have no "conflict of interest." The law only prohibits "official acts" when there is direct or substantial financial interest, and we have none. The law does not prohibit appointment to a board even for members who may, on occasion, have a conflict of interest on a particular issue.

You then used C4 policy letters (specifically the Humboldt Peak PUD request) as justification to disqualify C4 members from consideration. That too is wrong. First, C4 merely recommends actions, you decide. Second, in the Humboldt Peak position paper, C4 specifically did not take a position on approving or disapproving the application. The paper did say that <u>if</u> you decide to approve the application C4 recommended that a development agreement be signed stating all the terms and conditions upon which the decision was made. The paper also addressed the PUD policy in general and that does not present a conflict of interest. The other C4 position papers address matters of policy and procedures that do not constitute any kind of conflict.

The discussion then turned to the combined executive, legislative and judicial roles of commissioners and the boards. In judicial or quasi-judicial matters where a citizen asks the County for special consideration, the cases should not be discussed outside of the hearing process. But when it comes to regulations, policies, and procedures there are no such restrictions. In fact, we hope that anyone appointed to a board in any capacity would have a serious interest in the regulations, policies and procedures to be considered by the board. In short, there is no reason that C4 members cannot serve on the Planning Commission or as associates because C4 has presented position papers on land use or other matters that are found in policy, regulations, procedures, etc. Those are public topics that should be openly and widely discussed. The fact that C4

has done research and thoughtful analysis on the topics does not in any way suggest close-mindedness. In fact, the opposite is true. Intellectually honest analysis done by open-minded people who are able to change their views in the face of new information and the County should actively encourage such input.

Related to the above, we have heard you collectively say on multiple occasions that you are unable to attend public meetings, such as C4 meetings, because if you made a comment during such a meeting and the topic later surfaced where you would have to make an official decision on the matter, you would then have to recuse yourself from voting. Unless the topic is someone's specific application for county approval, that notion is wrong. Look at state and national elected officials who represent both the legislative and judicial branches of government. They constantly attend public meetings and hold press conferences where they state their positions on various issues and then return to session where they officially vote on the same matters without recusal. Conversely if an elected judge were to discuss a case in public that later appeared before the same judge, recusal would be required because that is a specific judicial case. But, your attending public meetings and commenting on policy, regulations, procedures, etc., cause no reason for you recuse yourself later as you vote on the same matters. Reaching out to the public at such public meetings and engaging in a dialog about issues of interest provides you an excellent forum for public input and to test the public pulse on issues.

The positions you took as outlined above are wrong and you have wronged a concerned citizen's organization that only has the best interest of the County at heart.

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Joe Arbuckle	Lockett Pitman