

December 11, 2008

Conservation Easement Oversight Commission Meeting

Division of Real Estate, 1560 Broadway, Suite 925, Denver, CO

Commissioners Present: Weston, Lair, Whisman, Cochran, Pike, Aangeenbrug, Winner, Vezzani, and Robotham

Elected Officials Present: Senator Jim Isgar

There were approximately 8 Division of Real Estate (DRE) staff present, as well as two Assistant Attorneys General, two representatives from the Colorado Department of Revenue, and two members of the public.

After beginning the meeting by going into executive session, the Commission reconvened to amend and approve the minutes from the November 10, 2008 and November 25, 2008 meetings. Chairman Pike then introduced the two newest members of the Commission, Commissioner Whisman from Boulder County and Commissioner Aangeenbrug from Great Outdoors Colorado.

Hollis Glenn, the Conservation Easement Program Manager from DRE, asked the Commission if they had any ideas to forward on to the Board of Real Estate Appraisers for their consideration regarding the appraiser education requirements specified in Hb08-1353. The Commission discussed several options, including requiring in-person education hours and having an experienced conservation easement appraiser checking the work of newcomers. Commissioner Vezzani said that the focus should be on restoring landowners' confidence that appraisers meet certain standards. Commissioner Weston mentioned that a checklist was created for the American Society of Farm Managers and Rural Appraisers seminar in Fall 2008 and that it is worth checking out. Chairman Pike said that DRE should make sure the Board of Real Estate Appraisers knows that the balance to be found is between rigorous standards and not making it too onerous for people to get into the business.

The Commission then adopted and approved the Conservation Easement Oversight Commission conflict of interest policy. There was some discussion about what was meant by "represented" in the provision disallowing any Commissioner from taking part in a certification decision for a land trust they represent. The Commission agreed that they interpreted it as meaning presently represent.

The next item on the agenda was the certification application for land trusts. Glenn told the Commission that they have gone through approximately 20 drafts of the application, have received comments from the Commissioners, the Colorado Coalition of Land Trusts, the Land Trust Accreditation Commission, and land trusts in Colorado. Over 100 comments have been made and around 70 were adopted. Glenn expressed a desire to work with CCLT and land trusts on the criteria that will be used to evaluate a land trust's application. Glenn also explained the process that DRE envisions for the application: a land trust will fill out an organization profile of basic information and a project chart for all of their conservation easements. DRE will then select a certain number of easements from the list in order to get additional information about the projects. It is at this point that the full application is sent to the land trust.

The commissioners provided comments as to specific questions and provided their opinion to DRE staff as the application continues to be tweaked. There was significant discussion about whether the application should consider conservation easements for which tax credits are not claimed or only focus on those for which they were claimed.

The Commission then talked about the meeting held in La Junta, Colorado on November 10, 2008. After Chairman Pike asked the commissioners for their thoughts on what should be done next, Commissioner Winner said that they should make recommendations to the state legislature. Commissioner Vezzani reminded everyone that the landowners expect the Commission to do something, so some sort of response is needed. He also wondered whether there is a way to lump together appraisals so that those who need reappraisals will know what they have to do to move forward. Commissioner Winner responded by saying that no appraisers want to touch southeastern Colorado deals and that even if they were done, they would be done at a fraction of the original appraisal. He then suggested creating buckets for the landowners: one for people who did only one or two easements, one for people who did multiple ones (including those who created LLCs to create and devise the easements), and then one for people who have been unable to sell their tax credits.

The Commission discussed the need to provide options that will give confidence to regulators that the ship has been righted and also restores confidence in landowners. Chairman Pike warned against any blanket solutions, such as a legislative extinguishment or granting everyone their tax credits, because the conservation easement process is a case-by-case process and applying a "one size fits all" solution would change that. Senator Isgar then read from HB08-1353 to remind the Commission that the Department of Revenue has been tasked with creating a process in consultation with the Commission. He asked the Commission what they thought about the section, but the Commission's counsel advised them not to talk about a tax statute and suggested Senator Isgar ask the same question of Revenue.

It was then suggested that the Commission form a subcommittee to address this problem or hold a voluntary meeting before the end of the year to start formulating option and recommendations.

The Commission then invited the representatives of the Department of Revenue to speak. Ken Schade had provided the Commission with a document describing the review process the Department uses related to conservation easements. He said that the approach is open to comment from the CEOC. Chairman Pike thanked Revenue for being at the meeting and expressed the Commission's desire for collaboration on these issues between DRE, Department of Revenue, and the Commission. Commissioner Aangeenbrug offered the resources that Great Outdoors Colorado has regarding appraisal review to Revenue.

The Commission then adjourned.