

# **CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION**

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## **September 12, 2007 – REGULAR P.O.A. BOARD MONTHLY MEETING MINUTES**

At 6:00 Board members Al Smith, Dave DiBerardino, and Peter Carey, and Association Manager, Chris Behan made a site visit to 78 Janet Place, Greenberg/Tutnauer Single-Family Residence

At 6:25 pm, Al Smith, President of the Board, called the meeting to order.

Board Members Present: Al Smith, Dave DiBerardino and Peter Carey.

Staff Member Present: Chris Behan, Linda Roberts

Others Present: Paul Greenberg, Deborah Tutnauer, Mark Collins, Jeff Bay, Sarah Hartman, Don Turk, Gene Mason, Patrick and Sue Wallace, Mike Weil, Don Smith, Kathy Norgard, Ilene Spector, Joanne Reynolds, Rob and Stacey Vanaernem, Carlos Gonzalez-Brito, Drew and Dawn Gillis

Approval of P.O.A. Board Meeting Minutes from previous Regular P.O.A. Board Meeting: The August 8, 2007, Regular Board Meeting Minutes were presented to the Board Members for review prior to the meeting. Peter made a motion to approve the August 8, 2007 Meeting Minutes. Dave seconded the motion. Motion was unanimously approved.

Approval of P.O.A. 2007 Annual Meeting Minutes. A quorum of the Board members present at the 2007 Annual Meeting was not present currently, the approval of the 2007 Annual Meeting Minutes was deferred to next month.

Financial Report: August 31, 2007, financial reports were presented to the Board including: the Monthly Budget Summary; Cash on Hand as of August 31, 2007; Bank Reconciliation statements for the Money Market, Operating, Hockey Rink, and Performance Deposit Accounts for the month of August and a summary of CD accounts. After reviewing the presented materials, Dave moved to approve the financial report as presented for August 2007. Pete seconded the motion. Motion was unanimously approved. The Board discussed FDIC insurance and directed Chris to review our bank accounts to determine that all of our accounts have FDIC insurance.

**Unscheduled Property Owners Comments:** None

### **Covenant Violation Hearings:**

**Bay/Hartman – RV; Lot 15, Block 11, Filing #2 – 98 Kubler Street**

Jeff Bay received a letter via certified mail on August 2, 2007 of alleged violation regarding the storage of his large RV on his property. On August 10<sup>th</sup>, the P.O.A. office received a letter from Jeff Bay and Sarah Hartman requesting a hearing regarding the alleged violation. A copy of Jeff and Sarah's letter was provided to the Board members. Jeff Bay presented a request for a 30 day extension for compliance. He stated that he and Sara Hartman wish to be good members of the

community and felt that the Board should pursue consistent enforcement of the Covenants. If the Board's reason for his notice of violation was to clean up the neighborhoods, they should be pursuing all of the trailers, junk cars etc. and not selectively picking on RVs. Jeff was informed that to keep an RV on his property his option was to build a garage for storage, which would need to comply with the P.O.A. Rules and Regulations. A temporary carport might not pass Gunnison County regulations nor would it be consistent with the P.O.A. Architectural Design Guidelines. Storage parking on vacant future commercial land is not permitted. A future option is to change the Covenants. The Board is enforcing the Covenants to clean up C.B. South in order of priority which has been lot appearance and RVs. Future enforcement will continue down the list which includes storage of other recreational equipment. Motion by Dave to deny the extension request, the RV must be moved from the Lot within 30 days or a fine will be imposed. Al seconded the motion. The motion was unanimously approved.

**Turk – RV; Lot 2, Block 16, Filing #3 – 722 Cascadilla**

Don was sent a letter of alleged violation regarding the storage of his large RV on his property, as received via certified mail on July 13, 2007. Don was present to contest his notice of violation. Don agreed with the arguments presented by Jeff Bay. Motion by Dave to require that the RV must be moved from the Lot within 30 days or a fine will be imposed. Al seconded the motion. The motion was unanimously approved.

**Cavanaugh – Lot Appearance; Lots 5 & 6, Block 4, Filing #2 – 204 Elcho Avenue and 229 Cement Creek Road**

Morgan Cavanaugh received via certified mail on June 26, 2007, a letter of alleged violation regarding the storage of an old car and a car seat or couch on his property. Morgan has called the P.O.A. twice promising that he would be back no later than Labor Day to remove the car and junk, however, he has not complied. Morgan Cavanaugh was not present. The Board directed Chris to give him a courtesy call to request that he take the actions as required or a fine will be issued.

**CB South General Store – Lot Appearance; Lot 7, Block 4, Filing #2 – 228 Elcho Avenue**

Oliver and his father received a letter via certified mail on June 23, 2007, of alleged violation regarding the propane tank on the General Store's property. The propane tank will be buried. Violation is being rectified.

**Performance Deposit Refund Request**

**Greenberg/Tutnauer Single-Family Residence; Lot 5, Block 22, Filing #3 – 78 Janet Place**

Paul Greenberg and Deborah Tutnauer were present along with their architect Mark Collins to provide information as to how their project ended up out of compliance with our Guidelines. Their original approved plans were presented at the meeting along with photos of their existing conditions. Deborah provided handouts of a letter signed by Todd Parker, a map, a calculation for determining the finished grading percentages and information from Onsite Roofing. This discussion was considered an "informal appeal" of the following items which are not in

compliance with the Guidelines and therefore would preclude refund of the Performance Deposit until compliance is achieved:

1. Roofing material has not been “dulled” as required; and
2. Changes to the approved plans must be approved by the P.O.A. before modifications are made not as they are on going, and changes must comply with the Architectural Design Guidelines or a variance must be approved.

It was Deborah’s position that the Board was shown a sample of the galvanized metal and approved it. Further, she believes that the changes to the grading and landscaping were warranted and when she informed Chris of this, he approved, albeit after it was completed. No redlined plans or actual documents were ever presented to Chris. Deborah presented her information from Todd Parker indicating that they believe that the slope is more stable than the retaining walls proposed and approved on the plans and that the slope is supported by a buried wall of rocks.

Regarding the shiny metal roof, the Board stated that they would not have approved the roof without a stipulation that the roof needed to be “dulled” immediately upon installation in order to meet the Architectural Guidelines. A long term vinegar solution would not be acceptable.

Regarding the slope of the landscaping, the Board stated that it is not in compliance. Changes must be approved by the P.O.A. before they take place, not during or after. Additionally a redlined copy of the original plans must be approved by the P.O.A. before changes are made. Mark pointed out that topographical maps are approximate when determining grade and recalled that the owners were required to have retaining walls added to the plans because the grade needed to not exceed 2:1 slope.

Regarding the vegetation/landscaping required to meet the Architectural Guidelines, the Board stated that it is not in compliance. The current vegetated area by the drive is insufficient to keep the driveway from eroding away. Further, the driveway as built would benefit from a guard rail at the bottom. Deborah informed the Board that because of the fabric on the ground to encourage seed growth can not be cut for 3 years, they are not able to plant the shrubs until 2009. Further, because their house is in a wildfire area, they can not plant trees within 35 feet of the house.

Motion by Peter that the following conditions must be met before the Applicant’s request for refund of their performance deposit will be considered:

1. May 1, 2008 the roof of the house will be reviewed. If it has not been dulled to comply with Guideline 4.3 requiring non-reflective materials, the performance deposit will be denied.
2. The Owners shall provide to Chris a redlined copy of the plans (plans showing the modifications to the original plans with redline) which shall be subject to Chris’s approval.
3. The Owners agree to plant shrubs and trees in 2009. This need not be a written document but is in good faith that the Owners agree to comply. Refund of the Performance Deposit is not forestalled until 2009, however, Owners will be in violation of the building requirements of C.B. South upon failure to comply.

The motion was seconded by Al and unanimously approved.

**Architectural Project Review:**

**Trickel Single-Family Residence; Lot 41, Block 23, Filing #3 – 2393 Bryant Avenue**

Gene Mason was present on behalf of the Trickel's. The driveway grade has been "softened" and now complies with our Guidelines. The house has been moved 10 feet down the hill to provide better separation from the driveway and the property line. Other items requested by the Design Review Committee have been provided. The north elevation solid to void ratio on the road side of the garage has been improved and the 8 foot retaining wall will be engineered. The applicant was reminded that retaining walls over 6-feet in height are not allowed and concrete poured retaining walls must be rock faced or covered by wood. The siding will be hardy plank and cedar siding. The applicant shall provide to Chris for approval the calculation of metal siding material in relation to the overall siding materials. This calculation measures the areas from finished grade to the fascia on each elevation, windows and doors are included. The windows and roof will be brown. The eave pitch located where by the front entry is a concern in that it may interfere with the window. It shall be moved over or made smaller. This change shall be approved by Chris and redlined on the P.O.A. plans prior to construction.

Motion by Dave to approve the project with the conditions:

1. The project shall include the changes set forth in the redlined plans and as set forth above, and
2. The plans shall be redlined to show the existing and finished grade line across each elevation measuring heights from existing grades across each elevation.

The motion was seconded by Peter and unanimously approved.

**Wallace Single-Family Residence-Lot 8, Block 15, Filing #3 – 810 Bryant Avenue**

Sue and Patrick Wallace together with Mike Weil and Don Smith presented the plans to the Board. The Applicants requested a front yard setback variance of 7.5 feet, and a parking variance – to zero lot line. The lot is an oddly shaped smaller corner lot and the Applicant's seek to build a slab on grade home that will maximize solar access based on calculations provided by Sue. The Applicant's basis for seeking the setback variance is that the future home on the neighboring lot would negatively impact their passive solar access. The Board discussed whether this variance was purely design driven or could be granted based upon hardship. Applicants also sought a variance for the roof pitch and a variance to allow metal siding in excess of 20%.

Section 4.2 of the Design Guidelines requires that at least 51% of the proposed roof area shall have a minimum pitch of 7:12. Section 4.1(c) provides that metal siding shall not exceed 20% of the total amount of the exterior siding without Board approval.

The Board determined that the small lot size and odd shape provides unique conditions not created by the Applicant. The metal siding and roof pitch variances would provide an attractive design to go with the land contours and reclaimed Douglas fir of the window trim. Motion by Peter to approve the project with the following variances:

1. The garage metal siding of 40+% is acceptable in this particular application in excess of the general 20% limit including the 3-foot surround of wainscot. This variance will provide an attractive design to go with the land contours and reclaimed Douglas Fir of the window trim.
2. The driveway shall be configured as a T-driveway with Hammerhead parking due to the odd shape of the lot and because there is road access on 2 sides of the lot which are unique conditions, not created by the Applicant.
3. The setback shall be reduced to 20 feet from the generally required 25 feet as follows: there shall be allowed a 5-foot encroachment on the Northeast corner from the front setback, due to the small size of lot and public policy in favor of alternative energy sources.

The motion was seconded by AI and unanimously approved.

### **Vanaernem Single-Family Residence-Lot 22, Block 2, Filing #1 – 238 Teocalli Road**

Rob and Stacey Vanaernem presented the plans to the Board. Specifically, windows, percentage of metal, driveway, fascia and PV solar panels were discussed. Drew Gillis, 214 Teocalli Road, reviewed the driveway placement and was satisfied with the space available for snow removal.

Motion by Peter to approve the project with the following variances:

1. The garage window on the West elevation shall be added/changed to approximately the same size as the other windows on that elevation because of the lack of relief of the solid-to-void ratio on the garage area.
2. All windows need to be relined on P.O.A. plans. All changes to the plans must be relined on the P.O.A. plans.
3. The 28-32% rusted metal siding is acceptable in that it would provide an attractive design to go with the land contours.
4. Photovoltaic solar panels flush mounted on the East elevation of the roof are acceptable.

The motion was seconded by AI and unanimously approved.

### **Gonzalez-Brito Windmill Application-Lot 22, Block 22, Filing #4 – 354 Cisneros Lane**

Carlos Gonzalez-Brito presented additional information to the Board concerning his Windmill Application which has been previously presented at the May and July 2007 Board meetings. Carlos informed the Board that there are no factory specifications for noise output available, the only information available were testimonials. The height can be reduced by the factory. The Board discussed noise, neighborhood compatibility and height. Motion by Peter to approve the project with the following conditions and findings:

1. The windmill shall comply with all of the Design Guidelines including, but not limited to height, setback, noise and application fees.
2. For purposes of height restrictions, the height to the top of the propeller when at its zenith shall not exceed 30 feet. Additionally, the diameter of the propeller shall not exceed 8 feet.
3. The guide-wires shall be within the property lines and the pole shall be within the setback requirements.

4. Carlos shall provide to the Board at his own expense professionally measured noise verification with wind at various speeds, including high wind events, specifically when the windmill is running at full speed right before it automatically shuts off.
5. The windmill pole shall be earth tone in color.
6. The Applicant has one year to erect the windmill.
7. This windmill application is unique in that the placement of the windmill is on a unique lot which provides a large amount of buffer space around the windmill.
8. The Applicant agrees to be bound by the conditions set forth herein and agrees that failure to comply shall result in fines and potential legal restrictions on the property.
9. The Board declares that this is not a blanket approval of windmills in C.B. South. This installation shall be a test case for future formulation of the Board policy regarding this form of alternative energy within C.B. South. The Board shall welcome public input on the issue in general, and this particular case.

### **New Business:**

#### **Home Occupation Regulations Review**

At 10 p.m. after an already long meeting, Chris presented a draft of Home Occupation regulations for review and modification as follows:

It is the policy of the Crested Butte South Property Owners Association to allow home occupations in residential structures on residential lots, on a limited and/or case-by-case basis. In order to maintain and preserve the residential character of Crested Butte South outside of the commercial district, home occupations will only be permitted when they meet the standards established below:

1. The home occupation shall be secondary to the main use of the dwelling unit. "Secondary" shall be defined as no more than 20% (twenty percent) of the primary residence units living space, excluding garages, sheds, mechanical rooms, unheated rooms, areas with ceiling heights of 5-feet or less, or accessory structures.
2. All aspects of the home occupation shall be contained and conducted within a completely enclosed building.
3. The home occupation shall not be permitted in a pre-existing garage or accessory structure.
4. In no instance shall the home occupation utilize over five hundred (500) square feet of floor area.
5. No structural alteration, including the provision of an additional entrance, shall be permitted to accommodate the home occupation, except when otherwise required by law. Such structural alterations shall not distract from the outward appearance of the property as a residential use.
6. No persons other than a maximum of two (2) members of the immediate family residing within the dwelling shall be engaged in the home occupation.
7. No window display or sample commodities shall be displayed outside the dwelling.
8. No materials or mechanical equipment shall be used which are detrimental to the residential use of the dwelling or any nearby dwellings because of vibration, noise, dust, smoke, odor, interference with radio or television reception or any other factor. It shall be the responsibility of the applicant(s), as part of the application process, to prove that no such disturbances or interference will result from the home occupation.

9. No parking of customer vehicles in a manner or frequency so as to cause disturbance or inconvenience to nearby residents or so as to necessitate additional off-street parking shall be allowed. A maximum of two (2) customer vehicles shall be permitted at one time.
10. No sign shall be permitted except for single name plate not to exceed one and one-half (1<sup>1/2</sup>) square feet in area. (A sign permit shall be obtained from the P.O.A. prior to erection of any signs.)
11. The applicant shall obtain a valid in-home occupation permit from the P.O.A. on an annual basis. This includes, but is not limited to: a site plan, floor plans, a description of the proposed business and its anticipated visitors/clients/customers, hours of operation, a completed CB South Home Occupation application, payment of a CB South Home Occupation application fee to be submitted with the application.
12. As part of the application process, the applicant shall notify all immediately adjacent property owners and occupants, not more than 30 days or less than 15 days before the application is to come before the Property Owner's Association Board of Directors for action. Such notice shall include a description of the business, as well as the date and time that the matter will come before the Board of Directors for action.
13. The location and operation of the home occupation shall found to be compatible with adjacent properties and land uses. As used in this paragraph, the term "adjacent All shall found to be compatible with adjacent properties and land uses. As used in this paragraph, the term "adjacent properties and land uses" shall have the following meanings: (i) if the site of the proposed home child care business is located in an apartment, condominium or other multiunit residential structure, adjacent properties and land uses shall mean all of the units located in that apartment, condominium or multiunit residential structure; and (ii) if the site of the proposed home child care business is located in any other type of residential structure, adjacent properties and land uses shall mean those units, lots and parcels located within a radius of one hundred feet from the site of the proposed home child care businesses, disregarding intervening public streets and alleys.

**Home child care business** shall be defined as a commercial business or activity conducted upon real property of a primarily residential character which involves the owner of the residential real property providing, for a fee, child care services for one or more minor children under the age of 12 years. A person who provides child care services only for their children in their own home is not engaged in a home child care business. Home child care business shall be considered on a case-by-case basis, but in no instance shall operation with more than 6 children be allowed; and all in-home daycare operations must meet all of the following:

1. The applicant(s) shall possess a current state home child care license sufficient to authorize the operation of the proposed home child care business under applicable state law and regulations.
2. The applicant shall confirm in writing as part of the application that the proposed home child care business will always be limited to the care of a maximum of six (6) children
3. The applicant shall submit a site plan demonstrating compliance with the applicable parking requirements of CB South for the existing residential use of the property where the home child care business is proposed to be operated. There shall be no additional parking requirement imposed for a home child care business in excess of the parking required for the existing residential use where the home child care business is proposed to be operated. The site plan shall also describe where outdoor activities will be conducted in connection with the operation of the home child care business.

4. The applicant shall confirm in writing as part of the application that there will never be more than one employee working in the home child care business who is not related by blood or marriage to the owner of the home child care business. Such person shall always work under the direct supervision of the owner of the home child care business.
5. The location and operation of the proposed home child care business shall found to be compatible with adjacent properties and land uses. As used in this paragraph, the term "adjacent properties and land uses" shall have the following meanings: (i) if the site of the proposed home child care business is located in an apartment, condominium or other multiunit residential structure, adjacent properties and land uses shall mean all of the units located in that apartment, condominium or multiunit residential structure; and (ii) if the site of the proposed home child care business is located in any other type of residential structure, adjacent properties and land uses shall mean those units, lots and parcels located within a radius of one hundred feet from the site of the proposed home child care businesses, disregarding intervening public streets and alleys.
6. The holder of the home child care business permit to operate the home child care business shall continuously possess a current state home child care license sufficient to authorize the operation of the home child care business under applicable state law and regulations.
7. The home child care business shall be operated at all times in accordance with the terms and conditions of the CB South permit, and the applicable state law and regulations which govern the applicant's state home child care license.
8. Any employee working in the home child care business who is not related by blood or marriage to the owner of the child care business shall work under the direct supervision of the owner of the home child care business. However, substitute caregivers shall be permitted if they comply with applicable state regulations.
9. The renewal of a CB South permit to operate a home child care business shall be processed with the CB South Association Manager. There shall be no fee for the renewal of a home child care business permit. The criteria for the renewal of a development permit for the operation of a home child care business center shall be the same as for the issuance of a new permit to operate a home child care business; provided, however, that an applicant for renewal of an existing development permit to operate a home child care business shall not be required to demonstrate compatibility of the home child care business with adjacent properties and land uses.
10. A permit for the operation of a home child care business is not transferable or assignable. A permit for the operation of a home child care business does not run with the land.
11. A permit for the operation of a home child care business may be revoked by the CB South Board of Directors following a hearing. Such development permit may be revoked for non-compliance with the terms and conditions of the permit which authorizes the operation of the home child care business, the terms and conditions of this Policy, or a violation of other applicable state or local rules, regulations, statutes and ordinances. Notice of the hearing on the proposed revocation shall be given in writing to the holder of the permit at the address for the permit holder shown on the permit, or such other address as may have been provided to the P.O.A. by the permit holder. Such notice shall set forth the grounds for the proposed revocation and the time and place of the hearing. Such notice shall be mailed to the permit holder, postage prepaid, at least ten days prior to the date set for the hearing. At the hearing the permit holder may appear with or without counsel and present such evidence as may be relevant. The decision of the P.O.A. Board of Directors with respect to a proposed revocation of a permit for the operation of a home child care business shall not be subject to appeal.

12. The P.O.A. Board of Directors may grant a variance from any provision of this Policy upon the written request of an applicant. A variance shall be granted upon a finding that: (i) the strict application of the requirements of this Policy would present a hardship; (ii) the hardship from which the applicant seeks to be relieved is not self-imposed; and (iii) the purposes of this Policy will be adequately served by the granting of the variance. No variance shall have the effect of nullifying the intent and purpose of this Policy.

The Home Occupation Committee consisting of Joanne Reynolds, Kathy Norgard and Ilene Spector presented copies of the regulations currently used in Crested Butte and Gunnison. Discussion ensued regarding the impact Home Occupations has on neighborhoods including noise, environment, parking, traffic etc. Home Occupations that do not have onsite visitors generally have little to no impact. Businesses performed in the garage may be a step more intensive, and child care is one of the most intensive uses. The state has four levels of childcare regulations. The impact on the neighborhood of childcare home occupations will vary with the level. Other questions addressed included whether C.B. South should require an application fee, annual renewal fee, etc. The Board directed Chris to continue to work on this issue.

With no further matters for discussion, Al Smith adjourned the Regular Board Meeting at 10:20 pm.

**10:20 pm Executive Session for P.O.A. Property Acquisition Discussion and P.O.A. Building Loan Payoff Discussion**

No notes taken in for executive sessions.