



NOTICE OF THE REGULAR MEETING OF THE GENERAL ASSEMBLY

TOWN OF OPHIR, CO 81426

TUESDAY 6:00 PM FEBRUARY 21, 2023

OPHIR TOWN HALL 36 PORPHYRY ST.

[Join Zoom Meeting](#)

Meeting ID: 867 0143 8435 Passcode: 373146

+16699006833,,86701438435#,,,,*373146# US (San Jose)

AGENDA

1. CALL TO ORDER
2. ADOPTION & SIGNATURE OF JANUARY 17, 2023 MEETING MINUTES
3. APPROVAL OF AGENDA
4. WELCOME TO NEW TOWN CLERK LISA RUTLEDGE
5. BUSINESS ITEMS
 - a. Cornwall/Whitaker Update (Osgood/Johnson)
 - i. Consider approval of engagement agreement with Garfield & Hecht, P.C. for legal services
 - ii. Executive session for a conference with the Town Attorney and Special Counsel for the purpose of receiving legal advice on specific legal questions under CRS Section 24-6-402(4)(b), specifically regarding a lawsuit filed by Joseph Waller against the Town.
 - b. Consideration of Cornwall/Whitaker settlement proposal for Town of Ophir
 - c. Silver Springs water rights approval for conditional agreement in water court (Johnson)
 - d. Community Solar Planning Grant Application presentation- Town of Ophir Letter of Support for DOLA planning grant (Kuper/SMPA)
 - e. Appointment of P&Z members (Kuper)
 - f. Ophir Road/San Miguel County Summer 2023 Paving (OEC/Wontrobski)
6. STAFF REPORTS
 - a. January 17th St. Louis Avalanche Slide Debrief (Osgood/Wontrobski)
7. NEW BUSINESS
8. ADJOURN

MINUTES OF THE REGULAR MEETING OF THE GENERAL ASSEMBLY

TOWN OF OPHIR, CO 81426

TUESDAY January 17th 2023 7:00 PM

REMOTE MEETING VIA ZOOM PLATFORM

CALL TO ORDER

(TIME: 7:04 PM)

Voting Members: Mason Osgood, Judah Kuper, Emma Christensen, Dave Chew, Teri Steinberg, Kelton Wright, Ben Foster, Lisa Rutledge, Raven Cashen, Phil Hayden, Leigh Sullivan, Cara Binkley, Dan Forgrave, Todd Rutledge, Lisa Rutledge, Dylan Sloan, Eric Beermann, Jacey DePriest, Todd Herman, Ryan Ehlers, Bill Allen, John Humphries, Nicole Lawton, Miriam Shaffer, Joe Shults, Chris Drew, Chris Dickson, Andy Ward.

Non-Voting Members: John Wontrobski, Cindy Wyszynski, Jonathan Cooper, Judy Prutzman, Slator Aplin, Steve Johnson, Joe Waller

ADOPTION & SIGNATURE OF December 21, 2022 MEETING MINUTES

Mason Osgood motions to approve with the following edits in CAPS “*4a. At the September 14th Planning and Zoning Commission meeting, the Commission voted unanimously (4-0) to recommend to the General Assembly that a request by Joseph Waller, representing the Whitaker-Cornwall property owners of Lots 1-10, Block Tow, to amend the Ophir Hazard Map to take those lots out of the HIGH HAZARD Avalanche Zone, be denied. All the materials considered by P&Z are included in this month’s GA packet, and the GA is also being asked to approve or deny the request, with the P&Z recommendation in mind. A reminder that this proceeding is considered quasi judicial in nature, meaning that all Town of Ophir Electors are required to weigh the request on the merits of the evidence presented at the GA PUBLIC HEARING (as a judge would), and not have any pre-judgements or biases that would taint the proceedings.*” Judah Kuper seconds the motion.

In Favor (Aye): Mason Osgood, Judah Kuper, Emma Christensen, Dave Chew, Teri Steinberg, Kelton Wright, Ben Foster, Lisa Rutledge, Raven Cashen, Phil Hayden, Leigh Sullivan, Cara Binkley, Dan Forgrave, Lisa Rutledge, Dylan Sloan, Eric Beermann, Jacey DePriest, Todd Herman, Ryan Ehlers, Bill Allen, John Humphries, Nicole Lawton, Miriam Shaffer, Joe Shults, Chris Drew, Chris Dickson, Andy Ward

Not in Favor (Nay): None

Abstain: Todd Rutledge

Motion to approve December 21, 2022 meeting minutes passes unanimously

APPROVAL OF AGENDA

Mason Osgood motions to approve the January 17th, 2023 Ophir GA Agenda, Jacey DePriest seconds.

In Favor (Aye): Mason Osgood, Judah Kuper, Emma Christensen, Dave Chew, Teri Steinberg, Kelton Wright, Ben Foster, Lisa Rutledge, Raven Cashen, Phil Hayden, Leigh Sullivan, Cara Binkley, Dan Forgrave, Todd Rutledge, Lisa Rutledge, Dylan Sloan, Eric Beermann, Jacey DePriest, Todd Herman, Ryan Ehlers, Bill Allen, John Humphries, Nicole Lawton, Miriam Shaffer, Joe Shults, Chris Drew, Chris Dickson, Andy Ward

Not in Favor (Nay): None

Motion to approve the agenda passes unanimously

BUSINESS ITEMS

4a Public Hearing-Rezoning Application

i. Project Name: Cornwall Property, Applicant: Joseph Waller

ii. Project Summary: The evaluation of avalanche hazard and mapping within lots 1-10, block two, Article 804 overlay adjustment, Appendix C Town of Ophir Hazards Map.

iii. Action Sought: Removal of lots 1-10, block two from the high hazard area designation on the Town of Ophir Hazards Map and retaining underlying residential zoning.

Todd Rutledge comments that four of the standards for a rezone apply, including an increasing housing crisis, it is under the current master plan, there is a compelling public interest through the need for housing. Finally, perhaps there was a substantial error found.

Phil Hayden comments he is in full agreement with Judah Kuper and the P&Z stance on this.

Dylan Sloan thanks town staff and P&Z for collecting this large agenda packet. He also comments there are issues with precedence here. He fears that if we don't get the back of our town staff then we lose our town staff, and values their opinions and agrees with them. He comments that a lot of people want to live here and its hard to say no because it feels like you're closing the door. He asks if these lots are under contract currently, and if so he is curious when they were put under contract. He finds it disturbing that if this is accepted these people would get to buy a lot. He says there are clearly people under the impression that if this is approved then people receive a lot, he says this is what he is hearing on the "street."

Mason Osgood comments that many of these comments from Dylan Sloan are not focused on the discussion at hand. Furthermore, he says if these lots are going to community members rather than out of state homeowners, this seems to be in line with what Ophir has agreed with in the past.

Joe Waller notes there are contracts assigned to a third party that is a San Miguel County resident that is responsible and hopes that these lots go to community members. This decision happened long before the P&Z recommendation for denial.

Joe Shults comments on his presentation at the last hearing on this matter at P&Z. Joe pulls up a presentation on the zoom screen that shows a photo of Cabins 1 and 2 in the mid 70's. He states that this picture clearly shows cabin 1 and 2. George Braun who lived in cabin 2, he stated that the back of the cabin had been damaged by an avalanche and in the mid 70's an avalanche that was shown in the INSTAAR map did occur.

Chris Dickson comments there are numerous other mountain towns that allow people to build in hazard zones and furthermore if these lots are going to community members he would rather have that than litigation.

Phil Hayden comments we should follow common sense and he is worried about liability of the town if these lots were built on. Mason Osgood mentions that the town would not have liability if these lots were built on.

Judah Kuper motions to deny the rezone application based upon the application as amended and supplemented, testimony, evidence and public comments presented at public hearing on June 11, 2019,

July 7, 2022, September 14, 2022 during the Ophir Planning and Zoning (P&Z) Commission as well as today's (January 17, 2023) Ophir General Assembly, that the Cornwall-Whittaker application to remove Lots 1-10, Block 2, Town of Ophir from the High Hazard Avalanche Zone District, be denied, for the following reasons: Applicant has failed to demonstrate by the preponderance of the evidence compliance with at least three criteria for approval of a zone map amendment. Specifically, P&Z finds that Land Use Code subsection 1415.C, REVIEW STANDARDS FOR CODE AND MAP AMENDMENTS is not met, insofar as no material or substantial error in the existing zoning map has been substantiated by the Applicant. Figure 10 of the 1976 Natural Hazards in Mountain Colorado INSTAAR Report included at page 46 of the rezoning application, documented that two houses located downhill from the Owner's property were moved by wet snow avalanches. These two houses were depicted in a 1952 plat map. The Report referenced a 1959 wet slide avalanche, based on reports of local residents. Based on common sense that documentation justified the Town including applicants' vacant uphill property in the high hazard avalanche zone district overlay when adopted in 1979, regardless of whether the INSTAAR avalanche modeling included the Applicant's property. Applicant's suggestions that a 1959 wet slab avalanche over applicant's property did not occur, and that those two houses were not moved by an avalanche, were not persuasive to overcome the INSTAAR documentation. I would also add the Group B avalanches shown on the INSTARR report looked clearly to me as defined as Zone 1 for the lots in question. Applicant has failed to provide any written narrative explaining how the standards for rezoning approval are met, as required by LUC 1405. Applicant only cited verbatim LUC 1415 subsections C, D and E as in compliance criteria. Applicant has refused to provide supplemental information specifically requested by P&Z concerning potential avalanche deflection if the rezoning were to be approved and structures were built on the owner's property. Applicant has not submitted any depiction of the structures that could be built upon the Owners' property if rezoning were to be approved, as required by LUC section 1408.4. The Owner's consultant, Wilbur Engineering, Inc., stated at page 6 in a 2007 Avalanche Study and Avalanche Hazard Analysis for the Owner's property, that the property is entirely within a "moderate/blue" avalanche hazard classification, but applicant has declined to seek rezoning to such classification. The underlying zoning, which may be erroneous, is residential (despite open space being the only use permitted by right in an avalanche hazard zone). Ophir does not permit new residential construction in the moderate/blue zone. Accordingly, the application does not comply with LUC 1415.E. The application fails to comply with the 2021 Ophir Master Plan, Goal M, detailed objective 3, as required by LUC section 1415.D: Goal M: Prevent Damage Caused by Natural Hazards Ophir residents are susceptible to certain natural hazards given the town's location and Ophir aims to protect its residents through ongoing awareness and education. Promote land use patterns that eliminate or reduce potential development in natural hazard Areas. John Humphries seconds.

In Favor (Aye): Phil Hayden, Leigh Sullivan, Chris Drew, Dylan Sloan, Andy Ward, Todd Herman, Abigail Herman, Joe Shults, John Humphries, Jacey DePriest, Judah Kuper

Not in Favor (Nay): Lisa Rutledge, Todd Rutledge, Emma Christensen, Chris Dickson, Kelton Wright, Ben Foster, Dave Chew, Nicole Lawton, Miriam Shaffer,

Abstain: Teri Steinberg, Raven Cashen, Eric Beermann, Kim Wheels, Bill Allen, Cara Binkley, Dan Forgrave, Mason Osgood

Motion passes 11-9-8.

4d (4b, 4c were not discussed due to nature of vote on item 4a) Election of Town Staff

Current nominations are: Mason Osgood, Mayor, Lisa Rutledge, Clerk, Jacey DePriest, Mayor Pro Tem, Cindy Wyszynski, Treasurer

Mason Osgood asks for unanimous acclimation, the AYES do not have it.

Mason Osgood motions to approve Mason Osgood, Mayor, Lisa Rutledge, Clerk, Jacey DePriest, Mayor Pro Tem, Cindy Wyszynski, Treasurer Judah Kuper seconds.

The Ayes have it, Todd Rutledge is not in favor. The motion is approved.

STAFF UPDATES

Mason Osgood (Mayor)-Community letter to USFS is coming soon. Keep in mind the speeding in and out of town.

Kim Wheels asks for cones in dry days to help slow down cars in Ophir, she agrees to be one putting cones out.

Mason Osgood (Clerk)-We found new clerk—welcome Lisa Rutledge

Cindy Wyszynski (Treasurer)-N/A

Jacey Depriest (OEC)-Megan Eno with USFS zoomed into the last meeting and discussed the Chapman Gulch Burn Piles. OEC and Mayor is drafting a letter for interested Ophirites to sign onto. Discussions of impacts of paving up to the Ophir loop as well.

Judah Kuper (P&Z)-LUC Updates are close to wrapped up and handing that off to Dan Reardon to approve and then it'll head to GA. Crowell + Marsh building application is in and approved!

John Wontrobski (Manager)-SMC Sheriff's department with the all hazards mitigation plan. Red Cross Emergency Shelters came up and if Ophir wants to list the maintenance barn as an emergency shelter.

NEW BUSINESS

Todd Rutledge asks about the green metal stakes on the Ophir road and who is putting them up. Aurum street is a one lane road in Old Ophir. John Humphries put them up and states they are on the side of the road and make sure the plow drivers do not plow into vegetation on the ground.

Chris Drew speaks to Todd's point about the roads becoming more narrow and having a conversation about pushing the piles back further. Mason Osgood points out that the "push back" is planned soon.

Phil Hayden speaks about plowing and coordinating with plowing to get a plan with snowplowing off of residential lots going into the street to be timed with snow removal.

Mason Osgood points out that our plower is new and trying his best.

Lisa Rutledge speaks up about Old Ophir neighbors pushing their own snow into the shared streets and if we can work together to put our residential snow piles onto our lots and not blocking the roads. Chris Drew agrees as well.

ADJOURN

Having reached the end of the agenda, and with no new business presented, Mason Osgood declared the meeting adjourned at 8:59pm

Town Clerk, Mason Osgood

Date

Minutes prepared by Mason Osgood, Town Clerk

Audio recordings of all General Assembly Meetings are available to the public. Please contact the Town Clerk if you would like a copy of this month's audio of the meeting minutes.

To: Ophir General Assembly

From: John Wontrobski, Ophir Town Manager

RE: Town Manager's Memo- February 21, 2023 General Assembly

Date: February 11, 2023

Business Items:

5a. Please see our attorneys' memo on this item

5b Our attorney, Steve Johnson, has advised us that in order for the Town of Ophir to accept these donated water rights (Silver Bell Springs, donated earlier by Richard Kearney), the Town (General Assembly) will need to agree to a condition, suggested by the Water Court, that the water infrastructure be improved within the next 6 years. Town staff believes this is a reasonable condition.

5c No memo for this item

5d Planning and Zoning Commission members Judah Kuper, Ernie Watenpaugh and Mark Ridders (alternate) all have terms which end in January, 2023. Kuper and Ridders are re-applying and Todd Herman has indicated his interest in running for the empty full seat. If they are all elected, there will still be two open full seats on the Commission.

February 6, 2023

ANDREW L.W. PETERS
303 575 7507
APETERS@OTTENJOHNSON.COM

VIA E-MAIL: STEVE@8750LAW.COM

General Assembly
Town of Ophir
c/o Steven Johnson, Town Attorney
36 Porphyry Street
Ophir, Colorado 81426

Re: Town of Ophir - Land Swap Proposal (Settlement Communication Pursuant to CRE 408)

Dear General Assembly Members:

This firm represents Joseph Waller in connection with the entitlement and disposition of Lots 1-10, Block 2 (collectively, the “**Property**”) in the Town of Ophir (the “**Town**”). As you know, Mr. Waller has for several years sought to amend the Town’s avalanche hazard map (the “**Hazard Map**”) to correct the Property’s original, and mistaken, assignment to the “high” hazard zone (the “**Amendment**”). As you know, too, the Town denied the Amendment by a one-vote margin, with a sizeable number of abstentions, after its introduction for first reading on January 17, 2023. Having reviewed the materials submitted in support of the Amendment, the countervailing arguments, and the Town’s process concerning the Amendment, we believe the Town denied the Amendment in error.

Nevertheless, in the interest of maintaining a good working relationship with the Town and advancing shared interests, our client has directed us to prepare an alternative proposal to preserve and protect the Property as open space in perpetuity in exchange for a limited number of other parcels in the Town. The proposal and the bases for it appear below. We hope this represents a viable path forward and respectfully request that the Town consider it at its February 7, 2023 staff meeting.

Background

Mr. Waller pursued the Amendment to correct the Property’s mistaken classification in the “high” hazard zone. The only basis for that classification seems to have been a note on the original 1974 INSTAAR Avalanche Hazard Map (the “**1974 Map**”) describing an “estimated wet spring avalanche that moved houses 1 and 2.” The 1974 Map itself did not identify the Property as in a “high” or “moderate” zone. Those labels appeared later, in versions of the Hazard Map derived from the 1974 Map without further study or analysis. Mr. Waller’s evidence, on the other hand, confirmed that the “estimated” slide never occurred, that houses 1 and 2 remained just where they had always been, and that the 1974 Map’s author in fact excluded the Property from the “high” and “moderate” hazard zones in later work accepted by the Town. Even the author of a later report classifying the Property as within a “moderate” hazard zone acknowledged that he never investigated the “estimated” wet slide and in effect carried forward the original error.

It also appears that some members of the General Assembly were not fully informed as to the effect of their votes during first reading. At least one member abstained “for the moment” suggesting the possibility of a later, final vote, and another member argued, during the vote, that members should stop abstaining because the Amendment might pass. It is not clear that a bare majority of the General Assembly would have denied the Amendment if all members present had been fully apprised of the effects of their votes and abstentions.

Proposal

While the above concerns and others cast doubt on the propriety of the denial, Mr. Waller hopes to maintain a good working relationship with the Town and the connections he has formed over the years. And from the start, his primary goal has been to make homesites available for Town residents who would like to build a place of their own. Further disagreement does not help Mr. Waller, the Town, or residents looking for housing amidst the state’s worst housing crisis.

To that end, and in compromise of any disagreement over the denial, Mr. Waller submits the following proposal for the Town’s consideration:

- Mr. Waller will cause the ten lots comprising the Property (or an equivalent conservation easement) to be conveyed to the Town in exchange for six developable lots (the “**Town Lots**”) currently under Town ownership, to be identified by the Town and Mr. Waller.
- Following the exchange, and in the interest of providing more housing options for Town residents, Mr. Waller will market the Town Lots to Town residents for a reasonable period of time, and will not list the Town lots on the Multiple Listing Service and other similar services highly visible to non-residents during that time.

This compromise resolves any uncertainty about the Hazard Map, protects the Property and the entrance to Town against development, and still creates housing opportunities aimed first and foremost at Town residents. It also advances the Town’s goals as outlined in its 2021 Master Plan. Most importantly, because Mr. Waller will trade the Property’s ten lots for the six Town Lots, it furthers the Town’s active Open Space Program while ensuring that Town-owned lots are not used in a way that results in over development or congestion. At the same time, it creates a thoughtful number of single family homesites—identified in collaboration with the Town—that “meet the needs of the Ophir community.”

We look forward to your careful consideration and would be happy to discuss this matter further at your convenience.

Very truly yours,



Andrew L.W. Peters
For the Firm

ALWP/lm

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GARFIELD & HECHT, P.C.

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February 13, 2023

VIA Email

John Wontrobski, Town Manager
Town of Ophir
P.O. Box 683
Ophir, Colorado 81426
manager@ophir.us

Stephen B. Johnson, Town Attorney
Wintercrown Building #227A
100 West Colorado Ave.
Telluride, CO 81435
steve@8750law.com

Re: LEGAL REPRESENTATION AND FEE AGREEMENT

Dear Mr. Wontrobski and Mr. Johnson:

1. **Scope of Engagement; You Hire Us To Act As Your Attorney:** Thank you for the opportunity for Garfield & Hecht, P.C. (the “Firm”) to represent the Town of Ophir (the “Town”). Initially, this engagement will be to serve as special counsel in defense of potential land use litigation threatened by Joseph Waller and related settlement discussions. This letter will also apply to any additional services performed at the request of the Town. After completion of this engagement, changes may occur in the applicable laws or regulations that may impact your future rights or liabilities. Unless you specifically engage us to provide additional services after the completion of this engagement, we do not undertake to advise you with respect to future legal developments relating to this engagement. Until such time as the Ophir General Assembly votes to hire us directly, this contract is between the Firm and Mr. Johnson’s law firm, Stephen B. Johnson Law Firm, P.C., to act as affiliated counsel for the Town at Mr. Johnson’s direction. Upon a vote at a public meeting of the General Assembly for the Town to engage the Firm directly, then this contract will be between the Firm and the Town. At that time, we will report directly to the Mayor and General Assembly, and the Town will be directly responsible for billing. Unless some conflict arises or we are otherwise directed by the Mayor or General Assembly, we would expect to continue working cooperatively with the Town Attorney and the Town Manager.

2. **Fees and Staffing; We Bill By The Hour:** The following rates will apply:

- a. For litigation matters and water rights matters, including the Waller matter, the rate will be \$350 per hour for David McConaughy and any other shareholders or “of counsel” attorneys. For associates, the litigation rate will be \$295 per hour.
- b. For general work not billed back to a developer or land use applicant, the rate will be \$245 hour for shareholders or “of counsel” attorneys and \$230 for associates.
- c. For all work subject to reimbursement from developers or land use applicants, the rate will be \$285 per hour for all attorneys of the firm.

- d. Travel to and from the Town at your request, or to court, will be billed one-way only from our Glenwood Springs office for one trip per month by one attorney. Any additional travel time will be billed at the general rate regardless of the nature of the matter. We also charge mileage at the IRS rate.

We can appear via Zoom or similar platform when practical. To the extent that we are already traveling to San Miguel County for business for other clients, such as the Town of Mountain Village, we will split travel costs and fees in an equitable manner when practical and appropriate.

From time to time, we may assign other lawyers, primarily associates, or paralegals for discrete tasks. We agree to keep records of all time spent. Unless otherwise advised, you will be billed monthly. Unless otherwise agreed, you will be billed for professionals' time at increments of 1/10th hour. Our rates and fees are based on factors set forth in Rule 1.5(a) of the Colorado Rules of Professional Conduct, applicable to all Colorado attorneys. We periodically review and adjust the hourly rates of our attorneys, paralegals or other timekeepers in response to rising costs, market conditions or other factors law firms typically take into account. By this letter you approve adjustments that do not exceed annually ten percent (10%) over the hourly rate initially quoted to you. Any estimate given regarding fees or costs of your matter are preliminary in nature and unless agreed otherwise are not binding on us and should not be relied upon. Actual fees and costs of your matter may vary substantially from estimates.

3. **Expenses; You Will Reimburse Us For Expenditures On Your Behalf:** You agree to pay promptly for such legal services and to pay all expenses incurred in connection therewith, such as long distance, court reporters, data compilation and management, office copying service, postage, Federal Express or other overnight carriers, filing, recording fees, secretarial overtime, and the like allocated to your legal matter. We may also incur travel, mileage, lodging and subsistence expenses for your legal matter for which you are also responsible. In certain matters, we will need to retain consultants, vendors and experts on your behalf. You authorize us to incur costs on your behalf, but we are not required to do so. We will attempt to obtain your consent before incurring costs in excess of \$500.00, but you understand that circumstances may make it impractical to obtain your consent before incurring such costs. You agree that you are solely responsible for any costs incurred on your behalf. In lieu of advancing costs, we may request funds from you for the payment of anticipated costs, which will be kept in our COLTAF account until the costs are incurred. These payments or requested funds for payment must be paid promptly.

4. **Litigation; We Cannot Guarantee Success:** If our representation of you involves a contested or adversarial matter, we intend to assert your position vigorously and efficiently. However, you must understand that, in representing any client in a contested or adversarial matter, we cannot promise or guarantee the ultimate success of your position, whether in a lawsuit, arbitration or any other forum. Our performance also depends, in large part, upon your cooperation and particularly upon prompt receipt of information and instructions from you from time to time as the matter progresses. Further, the level of activity may, in large measure, depend on the steps the other parties may take and their willingness, if any, to resolve your dispute without a full-scale trial. We hereby advise you of the existence of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

5. **Town General Assembly as Client:** We represent the Town as a municipal corporation and not any individual elected official or employee. We may undertake defense or representation of an official or employee acting in their official capacity if so directed by the General Assembly. We will take day-to-day direction from you, the Town Attorney, and other staff as you may authorize, but ultimately the decision to hire the Firm or terminate the attorney-client relationship will rest solely with the General Assembly. This means it is our duty to place the Town's welfare and interests ahead of the interests of any of the individual officials, employees, or citizens.

6. **Payment; We Charge Interest On Late Payment:** If you are billed for any legal services or expenses, you agree that payment must be made within 30 days of the date of any such bill. You will be charged compounded interest at a periodic monthly rate of 1.5% (this is an annual percentage rate of 18%) on any balance unpaid after 30 days, but in no event less than a 1.5% periodic monthly rate. In the event that you do not pay an invoice within forty-five (45) days and no information is brought to our attention regarding a dispute as to the amount owed, we may elect to take legal action including a collection lawsuit to recover our unpaid legal fees and costs and accrued interest. Under such circumstances you agree to pay our reasonable legal fees and costs incurred in such collection activity and you further agree to submit to the jurisdiction of the County or District Court in Colorado of the county in which our office is located where the primary legal services were provided as reasonably determined by us.

7. **Withdrawal; We Reserve The Right To Withdraw, You May Always Terminate Us:** By written notice, we may withdraw as your counsel for reasons including, but not limited to, failure to pay fees or expenses, failure to cooperate with the Firm, conflicting communications where there is more than one client contact, and those mandated by the Colorado Rules of Professional Conduct or otherwise provided in this agreement. If permission for withdrawal from employment is required by court rules, the Firm shall withdraw upon receiving permission from the court; and you agree to pay all legal fees until such permission is obtained or otherwise incurred incident to the winding up and conclusion of your representation. Upon withdrawal, you shall immediately pay any remaining balance owed on your account. You may also terminate our employment by notifying us in writing that the Town has passed an appropriate motion to that effect. The Firm reserves its right to assert a retaining lien or charging lien, as appropriate, on any unpaid balance.

8. **Privacy; Your Assurance Of Confidentiality, When Disclosures Are Permitted:** Subject to professional and ethical standards, all communications between us are protected by the attorney-client privilege. This privilege may be waived by you if you share the communications or advice with third parties. We advise you not to share or disclose attorney-client communications to any third parties without first consulting us. Additionally, we advise that you avoid posting any information related to the scope of our representation on social media, as this may result in a waiver of the attorney-client privilege. Any information that you post on social media may be discoverable by adverse parties; we advise you to avoid posting any information related to the scope of our representation or your underlying legal matter on social media. Confidential information may be shared by us with other attorneys, paralegals, contract attorneys or legal assistants and outside consultants retained on your behalf whose services are necessary in the course of our representation. Confidential information may also be disclosed by us to third parties where such disclosure is implied from the legal services you have requested us to provide such as our outside ethics counsel or our IT provider. Further, if requested, client names may be disclosed to any municipality that is or may become a client of the firm. This disclosure is limited to legal matters within the territorial limits

of such municipality or properties that may be eligible for annexation and subject to the requirement that the municipality keep such names confidential to the extent permitted by law. We protect all such information with physical, electronic, and procedural safeguards that comply with our professional standards. If we are representing multiple clients in this matter, it is your responsibility to advise us if any information you may give us is confidential. Otherwise, all relevant communications received from you may be disclosed to other clients we represent in this matter.

9. **Insurance; We Are Not Responsible For Insurance You May Have:** It is possible you may have insurance policies relating to the matter wherein you have requested our assistance. You should carefully check all policies and, if coverage may be available, notify the insurance company about the matter as soon as possible. We do not undertake any responsibility to advise you as to the existence, applicability or availability of any insurance coverage or to give notice or tender any claims to any insurance company for any of the matters being handled by this firm. If any insurance company undertakes the payment of any portion of our billing statements, you will still remain responsible for any amounts not paid by the insurance company. Finally, if there is insurance involved in any transaction where we represent you, it is your responsibility to determine whether or not the underwriter has adequate resources to pay any claim. We are not financial analysts, and we do not have the expertise to advise you as to the financial condition of any underwriter or insurance agent.

10. **Conflicts of Interest; Conflict Checks; Conflicts That May Arise Later and Waivers:** To protect both of us and to comply with our professional obligations, our representation is subject to clearance of any conflicts of interest with present or former clients of our firm, as well as approval by the firm's management which reviews all new matters. Conflicts of interest may also arise at some later date. If a conflict arises through no fault of our law firm, for example, as a result of a merger or acquisition you enter, you agree that such circumstances will not be a basis to disqualify us in this or any other matter. If a conflict arises because a particular lawyer joins our firm, you agree that it will be a sufficient remedy to screen such lawyer or lawyers from our engagement(s) for you, including any relevant documents. This firm represents many companies, associations, individuals, municipalities and other governmental or quasi-governmental entities. It is possible that during the time we are representing you, some of our current or future clients will have disputes or transactions with you. You agree that we may continue to represent or undertake in the future to represent existing or new clients in any matter, including litigation, even if the interests of such other clients in such other matters are directly adverse to yours, so long as those matters are not substantially related to our work for you. In cases where the attorney handling your case may be acquainted or friendly with the opposing attorney, we will consider if such relationship may interfere with the effective representation you would expect from us absent such relationship. If we do not perceive such interference, you hereby waive any conflict of interest where such relationship may be present. Should we perceive that such relationship might interfere, we will disclose such circumstances to you and discuss whether you would want to waive the conflict or have us withdraw from representing you.

11. **File Retention Policy; When Your Files May Be Disposed Of:** The Firm reserves the right to dispose of any file four (4) years after the legal matters described therein have been resolved or four (4) years after the last work on the matter has been performed, whichever is first. If you wish to obtain your file, you must do so by written request within said four (4) year period. You agree to be responsible for the shipping and handling charges incurred in forwarding these files to you or to any third party you may designate.

12. **Dispute Resolution; We Will Try To Resolve Disputes By Mediation And If Not Successful Then By Arbitration:** In the event of any dispute, controversy or claim (a “**Dispute**”) arising from or relating to (1) this agreement or breach thereof, including a dispute as to the amount owed for legal fees or (2) any representation or services provided by the firm including possible malpractice where the Dispute cannot be resolved by direct discussions between the parties, you and this firm agree to first endeavor to resolve the Dispute by mediation before resorting to arbitration. Mediation may be initiated by written notice by either party who has authority to resolve the Dispute. If the Dispute is not resolved within sixty (60) days after the beginning of mediation then, upon written notice by either party to the other, the dispute shall be finally resolved by binding arbitration conducted by, and in accordance with the rules of the Judicial Arbitrator Group, Inc., or, if such entity is no longer functioning, its successor or such other entity most nearly performing the same function in Colorado as we may reasonably determine. BY AGREEING TO ARBITRATION THIS FIRM AND YOU AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY. On balance we believe arbitration is a worthwhile way to resolve Disputes because it can be done expeditiously and with less expense than litigation. The place of mediation and arbitration shall be in the county in Colorado in which our office is located where the primary legal services were provided as reasonably determined by us. Except as may be required by law, a party, mediator or arbitrator may not, with respect to a Dispute, disclose the existence, content or results of any discussions, mediation, or arbitration hereunder without the prior written consent of both parties, and the process of discussions, mediation, if necessary, and arbitration, if necessary, shall, to the fullest extent allowed by law, be the sole means of resolving any Disputes. If we prevail in the arbitration, you agree to pay our reasonable attorney fees and costs incurred. As to non-payment of legal fees only, and provided neither party has requested mediation or arbitration, we reserve the right to file a collection lawsuit. If we have commenced a collection lawsuit for legal fees owed and in the course of that litigation you raise any matters that are required to be resolved in accordance with the dispute resolution procedures set forth herein, we shall dismiss or stay the litigation and submit the dispute to these resolution procedures.

13. **E-Mail Alerts; Website:** If you have provided us with your e-mail or mailing address, we may periodically send to you via e-mail or regular mail alerts involving firm news or changes in laws. If you do not wish to receive these alerts, please let us know, and we will omit your name from our distribution list. Sending such alerts is solely a courtesy to our clients and does not give rise to any duty on our part to keep you informed of changes in laws or constitute legal advice. Documents we send you by e-mail (whether or not containing confidential information) will not be encrypted unless you request us, in writing, to encrypt outgoing e-mail and we are able, without significant additional cost, to agree with you and implement mutually-acceptable encryption standards and protocols. We make reasonable attempts to exclude from our e-mails and any attachments any virus or other defect that might affect any computer or information technology system. However, it is your responsibility to put in place measures to protect your computer system against any such virus or defect, and we do not accept any liability for any loss or damage that may arise from the receipt or use of electronic communication from us. If you are a corporation or other form of entity, your signature below constitutes a consent to include your name in the Representative Client listing appearing on our website. We never post the names of individuals on the list. If you do not wish to have your name appearing on the listing, please let us know.

Please acknowledge your acceptance of the terms set forth herein by executing this letter and returning it to the undersigned by email or facsimile at (970) 947-1937. If you prefer to have an electronic

version I am happy to forward it to you via DocuSign for ease of signing. We look forward to working with you.

Very truly yours,

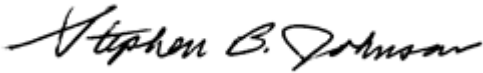
GARFIELD & HECHT, P.C.

David McConaughy

AGREED TO:

STEPHEN B. JOHNSON LAW FIRM, P.C.

TOWN OF OPHIR



By: _____

By: _____

If a different billing address is not provided below the address at the beginning of this engagement letter will be used for billing purposes. You may also elect to have your billing emailed to you. Please select your preferred method of delivery below.

Billing Mailing Address:

PO Box 726 _____

Telluride, CO 81435 _____

steve@8750law.com

E-Mail – Billing E-mail Address: _____



February 21, 2023

Microgrids for Community Resilience Planning Grant
Colorado Department of Local Affairs
1313 Sherman Street, Room 521, Denver, CO 80203

To Whom it may Concern,

I am Judah Kuper, the chairperson for the Town of Ophir, Colorado Planning and Zoning Committee. I am writing this letter on behalf of the residents of Ophir, Colorado to show our town's support to SMPA in the application for the DOLA Microgrid Community Resilience Planning Grant with an effort to plan and eventually build the Ophir Community Microgrid Project.

Ophir, Colorado is nestled at the bottom of a narrow valley at 9,695 ft elevation in the San Juan Mountains of Southwest Colorado and surrounded by towering peaks. We are situated in the east end of rural San Miguel County with a current population of 200 people living in 87 houses.

Ophir experiences several power outages a year, mostly due extreme weather events. Avalanche activity has caused outages in 2004, 2009, 2019, and as recently as January 18, 2023. Despite SMPA's best efforts to quickly resolve the cause of the outage, many outage conditions can leave residents with no ability to communicate and no ability to heat their homes for undetermined periods of time. Ophir's municipal water system is also unable to produce water during outages, which threatens water supply and local fire response. Extreme wind and storm events also put Ophir at risk of power outages.

In response to these problems, Ophir has begun working with SMPA to pursue the initial planning around various solutions. We expect the planning grant will allow us to further pursue the appropriate locations for a solar array, storage/microgrid controls, as well as other feasibility issues concerning system development, ownership, and financing.

Ophir's recently updated Master Plan includes goals of promoting sustainability and pursuing self-sustaining renewable energy sources. The residents of Ophir are strongly engaged in developing resilience for our community. 82% of residents supported a community solar project when responding to a Master Plan survey.

Thank you very much for your consideration of SMPA's application for the planning grant on behalf of the Town of Ophir.

Sincerely,

Judah Kuper, Planning and Zoning Committee Chair, Town of Ophir

P.O Box 683, Ophir, CO 81426
planning@ophir.us

A handwritten signature in blue ink, appearing to be 'Judah Kuper', is placed over the typed name and contact information.



Needles Slide Path

St Louis Slide Path

Crown Point Slide Path

Badger Slide Path

Staatsburg Slide Path

Spring Gulch Slide Path

Howard Fork Slide Path

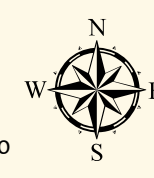
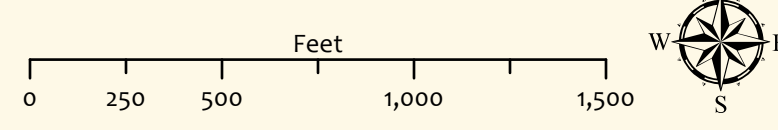
Magnolia Slide Path

The Colorado Slidepath

Waterfall Canyon

Swamp Canyon

Ophir Valley Slide Map



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