



NOTICE OF THE REGULAR MEETING OF THE GENERAL ASSEMBLY

TOWN OF OPHIR, CO 81426

TUESDAY 7:00 MARCH 18, 2025

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 February 18, 2025 MEETING MINUTES
3. APPROVAL OF AGENDA
4. BUSINESS ITEMS
 - a. Executive Session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under CRS 24-6-402(4)(b), specifically regarding Town avalanche regulations and the related threat of litigation (45 minutes- Town Attorneys McConaughy & Carner)
 - b. GA approval of a Tolling Agreement between the Town of Ophir and Waller, Cornwall, Whitaker.
 - c. Public Hearing/First Reading: Ordinance # 2025-01 an ordinance authorizing residential construction and improvement in moderate avalanche hazard zones when hazard mitigation procedures are followed
5. STAFF REPORTS
 - a. Town Manager
 - b. Staff
6. NEW BUSINESS
7. ADJOURN

****DRAFT**MINUTES OF THE REGULAR MEETING OF THE
GENERAL ASSEMBLY
TOWN OF OPHIR, CO 81426
TUESDAY FEBRUARY 18TH, 2025 7:00 PM**

Voting Members: John Humphries, Andy Ward, Ben Foster, Dave Chew, Annabelle O'Neill, Gunnar Doyle, Slator Aplin, Mark Worth, Eric Beerman, Amy Ward, Jerry Oyama, Teri Steinberg, Catherine Gockley, Mark Campbell, Natalie Fijalkowski, Tyler Schultz, Daniel Forgrave, Kim Wheels, Phil Hayden, Sue Hehir, Corrinne Platt, Chris Drew, Joe Shults, Allyn Hart, Todd Herman, Mark Ridders, Miles Heiner

Non-Voting Members: John Wontrobski, Cindy Wyszynski, David McConaughy, Terry Schuyler, Seamus Croke, Paul Hora, Corey Hiseler

1. CALL TO ORDER

Andy Ward calls the meeting to order at 7:06pm

2. ADOPTION & SIGNATURE- January 21st, 2025 Regular GA minutes

John H. motions to approve, Dave seconds.
Approved via unanimous vote.

3. APPROVAL OF AGENDA

Slator motions to approve, Gunnar seconds.
Approved via unanimous vote.

4. BUSINESS ITEMS

a. Executive Session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under CRS 24-6-402(4)(b), specifically regarding Town avalanche regulations and related threat of litigation.

Miles motions to approve, Gunnar seconds.

Executive session is subject to attorney/client privilege so there is no recording or minutes during the session.

Executive session begins at 7:11
Executive session ends at 8:26

b. Approval of Amended Ferric Oxide Conservation Easement document - New Dominion Mine Site Cleanup MOU. David McConaughy (Town Attorney) has reviewed the documents and they are in order.

John H. motions to approve. Annabelle seconds.
Motion passes with unanimous approval.

c. Approval of Letter of Engagement from Blair & Associates regarding 2024 Annual Audit Exemption. The only change made was David McConaughy (Town Attorney) amended the document to remove the indemnity clause.

Annabelle motions to approve. Miles seconds.
Motion passes unanimously.

e. Terry Schuyler presents final microgrid report.

5. STAFF REPORTS

a. Town Manager

Ground Pounders had 3 drivers out sick last weekend during the storm. Big thanks to Tyler for stepping up and doing a bunch of plowing.

John W. has talked to SGM, there is a new person doing maintenance on the western slope and will do quarterly maintenance on our water system – and may take over all maintenance on the system.

John W., Andy and Gunnar will be attending a Sonoran Institute conference on water systems.

b. Mayor

Winter is back!

On a sad note, Teri Savelli passed away recently. They live at the post office house. She was a wonderful woman and will be missed dearly.

c. P&Z

The town of Ophir is looking into its avalanche zoning regulations.

d. OEC

Continuing to work on dark sky certification. Working on grant funding for greenhouse and plants and pollinator work.

6. NEW BUSINEESS

None!

7. ADJOURN

Andy motions to adjourn @ 9:13pm

Minutes prepared by Ben Foster, Town Clerk

Audio and video 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.

MUTUAL TOLLING AGREEMENT

THIS MUTUAL TOLLING AGREEMENT (“**Agreement**”) is entered effective as of the 18th day of March, 2025 (the “**Effective Date**”), by and between the Town of Ophir (“**Town**”), and Joseph Waller, David T. Cornwall, Linda A Cornwall, Joyce A. Whitaker, and Gary W. Whitaker (collectively, “**Owners**”) (each, a “**Party**,” and together, the “**Parties**”).

Recitals

A. Owners are the owners of Lots 1-10, Block 2 in the Town of Ophir, Colorado (the “**Property**”).

B. Owners, through their agent, Joe Waller, have sought to remove the Property from the “high” hazard zone as reflected on the Town’s avalanche hazard map (the “**Hazard Map**”) and submitted an application to amend the Hazard Map (the “**Amendment**”).

C. On March 23, 2023, the Town’s General Assembly formally denied the Amendment.

D. Owners contend that they may have claims against the Town with connection to the Property, the Hazard Map, and the Amendment, including without limitation, a claim for a taking of private property without just compensation (“**Claim(s)**”).

E. The Parties wish to explore possible resolution of their disputes without simultaneously incurring expenses associated with formal litigation related to any such Claims.

F. The Town’s Planning and Zoning Commission held a public hearing on March 12, 2025, to consider an ordinance that would permit construction in Moderate Avalanche Hazard Areas as shown on the Hazard Map under appropriate circumstances (the “**Ordinance**”). The Planning and Zoning Commission will forward a recommendation regarding the Ordinance to the Town’s General Assembly. The General Assembly will then meet and consider the Ordinance on first reading on March 18, 2025. The Parties are also evaluating another possible resolution involving adjustments to the Hazard Map.

G. Without waiving any claims or defenses, the Parties desire to toll any applicable statute of limitations or similar defenses, to make provision for the retention of any legal or equitable actions or defenses that the Parties may have related to Owners’ potential Claims.

AGREEMENT

IN CONSIDERATION of the mutual promises contained herein, the Parties’ mutual desire to avoid undue expense, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate by reference and agree to the accuracy of the above recitals and further agree as follows:

1. Period of Tolling Agreement. This Agreement will be effective as of the Effective Date and will expire on September 23, 2026 (“**Expiration Date**”).

2. Tolling. The running of any and all applicable statutes of limitations, statutes of repose, or time-base equitable defenses (such as laches) that may apply to any Claims against the Town arising from or relating to the Property are hereby tolled and suspended as of the Effective Date of this Agreement, and will not begin running again until the first day following the Expiration Date (the “**Tolling Period**”). The Tolling Period will not be included in computing the time accrued under any applicable statute of limitations, statute of repose, or any equitable defense based upon the passage of time. If a Claim would have been timely filed if filed before the Effective Date, it shall be considered timely filed if filed during the Tolling Period, and, for such Claims, the Parties agree not to assert claims or defenses based on statutes of limitation, the doctrine of laches, or otherwise based upon the passage of time. For any amended Claims asserted in such litigation following the Tolling Period, existing law concerning relation-back of amendments shall apply to determine whether such amended Claims are timely. Any counterclaim or setoff arising out of the transaction or occurrence which is the subject matter of the opposing Party’s Claim shall be subject to C.R.S. § 13-80-109. This Agreement is not intended to and does not revive any Claim or cause of action against any person or entity that was barred by the passage of time or otherwise prior to the Effective Date, and a Party is not barred from asserting such a defense to a Claim in any future litigation. This Agreement shall not be construed to extend any statute of limitation, statute of repose or other time-based filing deadline that would expire after the Tolling Period. Any notice, tender, or other requirements that may arise upon accrual of any claims are tolled and suspended until this Agreement terminates as provided herein.

3. Claims and Defenses. Nothing in this Agreement shall affect any Claim available to Owners nor any defense available to Town as of the Effective Date of this Agreement. This Agreement does not affect, alter, or limit any defense that may be established by the passage of time during a period of time other than the Tolling Period. Nothing in this Agreement, or in the circumstances that gave rise to this Agreement, shall be construed as an acknowledgement by any Party that Owners’ Claims, if any, have been barred, or are about to be barred, by any statute of limitations, statute of repose, or equitable defense based on the lapse of time.

4. No Admission. This Agreement shall not operate as an admission of fact, law, or liability by any Party, nor does it affect the assertion of any defense to liability except as specifically provided in this Agreement.

5. Interpretation and Enforcement. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Colorado. It is the express intent of the Parties that all the provisions of this Agreement be given full force and effect as written. Should any judicial determination be made that any provision(s) of this Agreement is unenforceable for any reason, all remaining provisions of the Agreement will remain in full force and effect as written. The Parties agree that the rule of construction that any ambiguities are to be construed against the drafting Party shall not be employed in any interpretation of this Agreement.

6. Affiliates, Successors and Assigns. This Agreement shall apply to and be binding upon and enforceable by the Parties and all of their partners, shareholders, subsidiaries, parents, divisions, predecessors, successors, insurers, heirs and assigns, and their employees, officers, directors, trustees and agents.

7. Modifications. This Agreement contains the entire agreement between the Parties and no statements, promises, or inducements made by any Party or any agent of any Party that are not set forth in this Agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by the Parties.

8. Acknowledgement. The signatories to this Agreement expressly acknowledge that: (a) they are represented by and have discussed this Agreement with legal counsel of their choosing; (b) they have read this Agreement, understand and appreciate its terms, and are fully informed with regard to their rights and obligations under this Agreement; and (c) they have executed this Agreement voluntarily with a full and complete understanding of the consequences of that execution.

9. Counterparts. This Agreement is intended to be executed on separate signature pages, which together shall constitute one and the same agreement. Documents transmitted by email or facsimile that the Parties have signed shall be effective as of the Effective Date and shall be as valid and binding as though they were original documents.

10. Authority to Execute. The signatories to this Agreement certify that they are authorized to execute this Agreement and legally bind the Party on whose behalf they are signing.

11. Attorneys' Fees. In any legal action or other proceeding brought to construe or enforce any of the provisions of this Agreement, the prevailing Party shall be entitled to recover its costs and attorneys' fees from the opposing Party.

12. Notice. For the purpose of providing any notice required or allowed under this Agreement, the following mailing addresses should be used:

To Owners:

Joseph Waller
PO Box 32251
Phoenix, Arizona 85064

With copy to:

Andrew Peters
Otten Johnson Robinson Neff & Ragonetti, PC
950 17th Street, Suite 1600
Denver, CO 80202

To Town:

Town of Ophir
Attn.: Town Manager
Box 683
Ophir, CO 81426

With copy to:

David McConaughy
Garfield & Hecht, P.C.
910 Grand Ave., Suite 201
Glenwood Springs, CO 81601

IN WITNESS WHEREOF, this Agreement is effective as of the 18th day of March 2025.

TOWN OF OPHIR, COLORADO,

By: _____

Attest: _____

Joseph Waller:

By: _____

Name: _____

Date: _____

David T. Cornwall:

By: _____

Name: _____

Date: _____

Linda A. Cornwall:

By: _____

Name: _____

Date: _____

Joyce A. Whitaker:

By: _____

Name: _____

Date: _____

Gary W. Whitaker:

By: _____

Name: _____

Date: _____

TOWN OF OPHIR, COLORADO

ORDINANCE NO. 2025-1

**AN ORDINANCE AUTHORIZING RESIDENTIAL CONSTRUCTION AND
IMPROVEMENT IN MODERATE AVALANCHE HAZARD ZONES WHEN HAZARD
MITIGATION PROCEDURES ARE FOLLOWED.**

WHEREAS, the Town of Ophir, Colorado (“Town”), is a home-rule town and political subdivision of the State of Colorado, duly organized and operating under the Constitution and laws of the state and the Ophir Town Charter; and

WHEREAS, many tracts of land within Town boundaries are exposed to moderate to high avalanche risk; and

WHEREAS, the Town desires to permit residential construction and modification in Moderate Avalanche Hazard Zones, as defined by the Hazards Overlay Map, when engineering reports indicate that it is safe to do so given the proposed building design; and

WHEREAS, the Town desires to adopt the following ordinance to permit construction in Moderate Avalanche Hazard Zones under appropriate circumstances and subject to the requirements set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, COLORADO:

Section 1. Recitals. The Recitals set forth above are incorporated herein as findings and declarations of the General Assembly.

Section 2. Modification. The modification of Article VIII, §801 in the Town’s land use code shall read as follows:

§801 **INTENTION AND PURPOSE.** The Avalanche Hazard Zone is intended to define areas where avalanche hazard threatens the health, safety and welfare of persons and property, and to restrict development in those areas other than (a) the replacement, relocation, renovation or expansion of existing grand-fathered single family dwellings and accessory buildings in accordance with standards and procedures of the provisions of §307.2 and §803; ~~and~~ (b) the replacement, renovation or expansion of the old jail building located on Lots 9 and 10, Block T; and (c) residential construction and modification in accordance with the provisions of §803.5(A) to (E). The Avalanche Hazard Zone boundaries are established on the official Hazards Overlay Map of the Town of Ophir.

Section 3. Modification. The modification of Article VIII, §803.2 in the Town’s land use code shall read as follows:

§803.2 No structures or accessory buildings, other than replacement, relocation, renovation or expansion of a grandfathered single-family dwelling or accessory building, or the old jail building located on Lots 9 and 10, Block T, as may be approved pursuant to a Variance or the Special Use Permit process in accordance with the standards and requirements of §803, shall be permitted in the zone designated on the Hazards Overlay Map as High or ~~Moderate~~ Avalanche Hazard;

Section 4. Addition. The addition of Article VIII, §803.5 to the Town's land use code shall read as follows:

§803.5 Notwithstanding any other provisions of this code, residential construction and improvement shall be allowed in Moderate Avalanche Hazard Zones, as depicted by the Hazards Overlay Map, subject to hazard mitigation procedures. Prior to the issuance of a building permit, the applicant must provide to the Town:

A. A written report analyzing the potential avalanche hazards and the potential physical forces created thereby upon the proposed improvement or structure. Said report shall be prepared and signed by a qualified avalanche expert, based on such expert's education and experience in avalanche hazard mitigation. Said report shall also be recorded in the real estate records of San Miguel County with a reference to the subject property.

Commented [HC1]: Consider adding additional details regarding specific education, qualifications, and experience

B. A structural analysis of the proposed building prepared and signed by a state licensed structural engineer reflecting an engineering analysis and design that takes into account the potential force from an avalanche as set forth in the avalanche report referred to in subsection A of this section.

C. A complete release and indemnification agreement releasing the Town, as required by §803.1.

D. No building permit shall be issued to any applicant unless the state licensed structural engineer submitting the written report analyzing the potential avalanche dangers required in this section certifies, in writing, that the proposed building design and construction or proposed structural modification of an existing structure, will protect human life throughout the dwelling unit, building or structure from the anticipated one hundred (100) year avalanche forces for the location of the proposed dwelling unit, building or structure or proposed addition or modification thereto. Additionally, the written report prepared by the avalanche expert shall certify that the proposed building design or modification will not negatively impact another structure, property or any public right of way as part of the mitigation plan.

Commented [HC2]: Consider a neutral impact determination vs. no negative impact. For example, replace "will not negatively impact" with "will not increase the avalanche hazard to"

E. The Town may require, at its discretion, a bond, letter of credit or other guarantee to ensure that the requirements of this section are complied with and the construction of any approved buildings or structures will be completed in strict accordance with the approved plans and specifications.

Section 5. Addition. The addition of Article VIII, §803.6 to the Town’s land use code shall read as follows:

§ 803.6 Each and every real estate agent, salesperson and broker, and each and every private party owning property within the Avalanche Hazard Zone shall provide prospective purchasers, lessees, or tenants with written notice that said real property is located within the Avalanche Hazard Zone prior to or in conjunction with viewing said property. The written notice must state that §803.5 avalanche studies are available for public inspection at the office of the Town Clerk and that the studies should be reviewed prior to any party entering into any agreement, contract, or lease concerning said property.

Section 6. Addition. The addition of Article VIII, §805 to the Town’s land use code shall read as follows:

§805 PROPORTIONAL PARCEL RESTRICTION. When the Avalanche Hazard Zone covers only part of a parcel, only the portion within the Avalanche Hazard Zone is subject to Article VIII development restrictions.

Section 7. Publication. After final adoption, a public notice shall be published which notice shall contain the number and title of this ordinance, a brief description of the ordinance, its effective date and notice that all copies are available for inspection at the Town Hall office.

Section 8. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Introduced, Read, and Referred to Public Hearing on First Reading by the General Assembly of the Town of Ophir on the ____ day of _____, 2025.

Approved and Adopted on Second and Final Reading as Amended by the General Assembly of the Town of Ophir on the ____ day of _____, 2025.

By: _____
Andy Ward, Mayor

Attest: _____
Ben Foster, Town Clerk

Approved as to Form: Town Attorney

**NOTICE OF PUBLIC HEARING AND FIRST
READING OF A PROPOSED ORDINANCE**
Before the

Ophir General Assembly

Notice is hereby given that on March 18, 2025 at 7:00 PM, or as soon as possible thereafter, in Ophir Town Hall, 36 Porphyry Street., Ophir, Colorado, or at such other time and place as this hearing may be adjourned, a public hearing will be held to consider:

Project Name: Ophir LUC Update to allow development in Moderate Avalanche Hazard Zone

Project Summary: Consideration of a proposed ordinance to allow development in the Moderate Avalanche Hazard Zone

Legal Description: Consideration of a proposed ordinance to allow development in the Moderate Avalanche Hazard Zone

Address: Town of Ophir

Owner: Assorted

Applicant: Town of Ophir

More complete Information is on file and available at Ophir Town Hall, 36 Porphyry Street, (970)728-4943.