

## More Liability Issues at Stake in Hogbacks Decision

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Additional liability issues could face Cañon City if the Hogbacks area is officially sanctioned as a park or recreation area.

Tami Tanoue, attorney with the Colorado Intergovernmental Risk Sharing Agency, explained governmental immunity, development options and liability consequences for the Liability Subcommittee of the Hogbacks Committee on Thursday afternoon. Led by City Councilman Keith Hovland, the parent group is tasked with determining the best options for the property that lies just to the east of Skyline Drive.

Currently, the city is covered by governmental immunity because the Hogbacks remain in a natural, unimproved state.

"Today, if something were to happen and a lawsuit were to be filed, we would assert governmental immunity and deny the claim," Tanoue said. She then spelled out liability issues for each of the five scenarios suggested by the committee as possible solutions for the area.

First, in the no action (almost) scenario, there would be no major changes in the management of the area. If the land remains vacant and unimproved, Tanoue said the city would continue to assert governmental immunity.

Second, if the area was developed as a motorized recreation area, the city would become responsible for design, construction, operation and maintenance of the area. Those actions would turn the area into a public facility, which then would create liability for dangerous conditions. Tanoue outlined possible liability-reducing methods, including waivers and special events liability coverage.

Third, the area could be developed as open space. Tanoue said if the city "reclaimed" rather than "improved" the area, immunity could arguably be asserted. However, if the land was improved, liability issues would increase with the dangerous conditions situation.

Fourth, if the property was developed into a multi-use space, part for motorized use and part for non-motorized use and/or buffer area, the same liability as the second scenario would occur.

Finally, the Hogbacks could be closed and posted against any and all recreational uses. In that situation, the area would not be a public facility in a recreation area, so governmental immunity would continue to apply.

"Decisions should be made on all of the factors that are important to the community," Tanoue said, "including liability. But, liability should not be the driving factor."

Any change in liability status also would change the premium the city pays to CIRSA for coverage, Tanoue said.

Liability insurance would be required if the area was opened up for either motorized or foot traffic; however, City Attorney John Havens said associated costs would be much greater for motorized use than non-motorized.

Hovland said the information from Thursday's session will be funneled to the committee, which will formulate a recommendation to deliver to City Council for its consideration.

"We will talk to the full Hogbacks Committee to factor this into the decision-making process," Hovland said. "We hope to come up with some defined parameters for usage of the area to take to City Council for its consideration, probably toward the end of June."

The committee will formulate language for a proposed city ordinance as well as recommended ballot language for the November election, because any use as a public park must be approved by the voters.

"We still have some work to do," Hovland said.

Havens took Tanoue on a tour of the Hogbacks area prior to the meeting to give her a close-up look at the area in question.

"It's a wonderful amenity to the city," Tanoue said of the Hogbacks area, "whatever you do or don't do with it."

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