



**CACHE COUNTY CORPORATION  
DEVELOPMENT SERVICES DEPARTMENT**

JOSH RUNHAAR, AICP  
DIRECTOR / ZONING ADMINISTRATOR  
PAUL BERTSON  
CHIEF BUILDING OFFICIAL

179 NORTH MAIN, SUITE 305 LOGAN, UTAH 84321 ♦ (435)755-1640 ♦ FAX (435)755-1987

**Planning Commission Minutes**

**04 October 2012**

<b>Item</b>	<b>Page</b>
1. Public Hearing: 5:35 p.m. – Michael Allen Rezone.....	2
2. Frandsen Media KVNU Tower Rezone.....	6
3. Jackson Ridge Subdivision .....	11

**Cache County Planning Commission**

Minutes for 04 October 2012

**Present:** Chris Harrild, Josh Runhaar, Phillip Olsen, Leslie Larson, Chris Allen, Clair Ellis, Lamont Godfrey, Jon White, Megan Izatt

**Start Time: 5:31:00**

**Larson** welcomed and **Olsen** gave opening remarks.

**5:35:00**

**Agenda**

*Passed*

**Minutes**

*Passed*

**5:36:00**

**Regular Action Items:**

**#1 Public Hearing – 5:35 pm Michael Allen Rezone (Michael Allen)**

**Allen** I would like to disclose that I am a relative of the applicant and also the applicant did ask to meet with me before this meeting but that meeting never happened. I have no financial stake in this.

**5:37:00**

*Olsen* motioned to open the public hearing; *Godfrey* seconded; **Passed 4, 0.**

**Larson** Runhaar will sit out for this item due to a potential conflict of interest.

**Harrild** reviewed the process and requirements for a legislative decision and noted that findings of fact may reflect the opinions of the planning commission members and are not required to be based in the ordinance.

**Ellis** expressed concern with using opinions for findings of fact when there are some requirements listed in the ordinance to identify where an RU- 5 zone may occur.

**Harrild** reviewed Mr. Michael Allen’s request for a recommendation of approval to the County Council for a rezone of 31.58 acres of property from the Agricultural (A-10) Zone to the Rural-5 (RU-5) Zone located at approximately 12851 North High Creek Road, Cove. The current

ordinance and the current comprehensive plan do not specify appropriate locations for the RU-5 zone. Currently parcels 18-046-0011 and 0014 are both restricted as 0011 was divided from 0014 without approval from the land use authority. There is also an existing home on 10-046-0011 that was built prior to the illegal division. 18-046-0012 is a legal developable parcel. Current acreage and zoning allows a maximum of two (2) building lots as this is a legal, previously divided, non-1979 parcel. However the slopes on the parcel are >30%, which could possibly reduce the allotment of building parcels to 1. Within a one-mile radius of this parcel, the density of homes is currently one unit per 82 acres and an average parcel size of 26 acres. Of the parcels that have homes on them the average parcel size is 9.5 acres. Also, the properties to the east and some of the properties to the south are zoned Forest Recreation (FR-40). Based on this analysis and the noted findings of fact, staff is recommending a recommendation of denial of the Michael Allen rezoning request.

**Harrild** read the staff determination and findings of facts out loud for the audience and explained staff's reasoning for a recommendation of denial.

**Ellis** read the section of the ordinance and the requirements that identify where the RU-5 zone may occur.

**Harrild** noted that the section of ordinance identified by Ellis refers to the purpose of the established base zoning districts as relates to uses or developments that may occur therein. The stated purposes in that section of the ordinance are not intended to guide where base districts should be established. The commission mentioned that it would be helpful if the density on the road was also looked at.

**Mike Allen** a little history on this, the property was bought in 1985. In 1992 I built a new house. At that point the goal was to put all the property on the east side of the road as one parcel and the property on the other side as one parcel. However, the lines weren't done correctly. Originally I wanted to use the road as a boundary but that didn't work to good. I was told in the early '90s that if I wanted to build a house I needed to divide the property, so I did. In 2006 I sold that house and built another house down the road. I've been gone for a little while and have outgrown the house I have now and I want to build a new house. I went in to the development office to start the process and that has been a frustrating process. I didn't know it was illegal to sell part of the property and I can see that you can put restrictions on the property but I didn't know that I couldn't sell the house the way that I did. I've had realtors to look at it and they say anything that I do will make two illegal lots. I have had the property surveyed because I was told that is one thing that I needed to do. Initially I wanted just one more house, but going through this process, if I have to rezone it I might as well rezone it for two. As far as density for the road he did a one mile radius and there are homes on the hill. There are two roads in High Creek, one is 4 miles long and there are 24 homes on High Creek road excluding the two homes that I have built. On the upper road there are 14 homes and I don't know all their owners. The ones that I do know, there are 5 homes on less than an acre. As to where I want to build a house, there are three homes above that area on the road. There isn't a lot of traffic on the road unless it's hunting season.

**Ellis** how long of a road is that? I'm wondering how many homes per mile.

**Mr. M. Allen** most of the houses are grouped together. To build in Cove, it's generally needed to have family already there because they don't sell property very often.

**Ellis** you mentioned there were 24 to 26 homes on the road, about how long is that road?

**Mr. M. Allen** I think it's about 4 miles.

**Ellis** so 6 homes per mile.

**Mr. M. Allen** the sign says 4 miles to the trailhead and that upper road goes over towards Richmond.

**Ellis** how many homes on the east side of the road?

**Mr. M. Allen** from the Y there, there are 7 homes. Then there is one more home beyond that.

**Ellis** so in that section there are 7 homes and this proposal could conceivably add 5 more homes.

**Mr. M. Allen** two are already there and I want to build another home. So there would be four on that third area of acreage. But one is what I'm trying to get and I guess there are restrictions on that little house and I want to do what's necessary to get it line.

**Ellis** what if that whole area was rezoned RU-5? I think for a planning purpose we should look at that whole thing as a district and I don't know what that would do.

**Harrild** due to the number of restricted parcels in the area the resultant restrictions do not allow us to address the issue of re-zoning the entire area as regards issues with the FR-40 and Agricultural (A-10) zones in that area.

**Mr. M. Allen** there are 26 acres there. I have a hard time with not being able to sell that house because I did have a buyer for because he couldn't get financing it's no longer under contract. I know there are restricted parcels I could see if you didn't want me to build on the rest of the land why you would restrict that. But I don't see why you would restrict that parcel that has been there for years and make it so I can't sell it so that whoever buys it can't do anything with it. If you just restrict us that guy would still be free to do what he wants and then I would deal with the restrictions, but I guess I have that on both sides of the road now. I don't have it on the bottom side unless I sell. That's something I think needs to be looked at.

Staff and planning commission discussed how parcels become restricted. Staff looks at the whole parcel. If the parcel has been illegally subdivided, staff cannot recognize that boundary. Subdivision must be approved by the land use authority. If land is divided without the approval of the land use authority the resultant parcels are restricted from future development. It is not illegal to sell the land, but it does restrict the development of that property in the future. Taxes on the illegally divided land are a separate issue and are dealt with by the assessor's office. Acreage due to the slopes that is deemed undevelopable and how that affects developable acreage was discussed.

**Ellis** I'm guessing if the applicant could have done the second home without rezoning he would have but looking at the slopes and all that, you've made the determination that it wouldn't be allowed.

**Mr. M. Allen** from my understanding that, it's not allowed. I've also worked with my neighbor who I've sold that to try and make this right. I just want to do what needs to be done to make this right. And that boundary line isn't where it is intended to be and we want to fix that.

**Larsen** so you can't do a boundary line adjustment?

**Harrild** a boundary line adjustment could be completed at the time of subdivision.

**Mr. M. Allen** my understanding is that a subdivision still wouldn't allow me to build a house because of the number of lots allowed with the remaining 26 acres.

**Harrild** if you go through the proper process and subdivide the property at the existing density there is the potential for one additional home.

**Mr. M. Allen** but we need to go through this to get another lot?

**Harrild** you have elected to rezone the property to allow the potential of more than one additional home.

**Larson** do you have that?

**Mr. M. Allen** I want to do this all at once so that nobody is restricted.

The possibility of trying to change the boundary lines to increase the number of developable acreage was discussed however to do that the applicant would have to buy more property.

**Mr. M. Allen** just getting it for sale would be the hard part.

**Troy Allen** if he buys more property adjacent to this it isn't part of the original 1970 parcel. How does that help him? It's still not part of that 1970 parcel.

**Ellis** the larger parcel is not a 1970 parcel either, right?

**Harrild** it is a 1970 parcel however it has been illegally divided since that time. In regards to Troy's question, changing that boundary line by purchasing more property would mean he would have to go through the boundary line adjustment process and that would include his property and the adjacent property. We often run a subdivision and boundary line adjustment together to benefit the applicant.

**Mr. T. Allen** kind of, I just don't see how he is allowed 3 homes but if you take that undevelopable land into account that it's reduced to two homes.

**Harrild** he would have to buy enough acreage to bring his total number of acres for that parcel above 30 not including the undevelopable acreage.

**Mr. T. Allen** so the parcel he buys acreage from would reduce the development of that parcel.

**Ellis** the density standard is independent of the parcel size; it looks at the entire subdivision boundaries. You could combine parcels within the subdivision of all sizes and densities for the total. You would just have to end up with ½ acre building lots when you are done.

*Ellis motioned to close the public hearing; Olsen seconded; Passed 5, 0.*

Development along the road was discussed. If the development was directly adjacent to the road it wouldn't make that big of impact. Also, we are talking about 3 homes on 30 acres, not a large subdivision or the typical RU-5 density. This rezone does potentially open the entire area up for more rezones to the RU-5 area. The area is not necessarily prime agricultural ground, it is more cattle ground and pasture. This application would not necessarily impede agriculture in this area. Planning of where zones would fit in the county and this being a possible spot zoning was discussed. Notification of more people along the road was discussed. There were 11 notices sent out for this item. The possibility of the applicant to apply for a variance was discussed. A variance is not appropriate in this instance.

*Ellis motioned to continue up to 90 days to gather more information; Allen seconded; Passed 3, 2 (Larson and Godfrey voted nay)*

**6:59:00**

### **#2 Frandsen Media KVNU Tower Rezone (Joe Chambers)**

**Harrild** reviewed Mr. Joe Chambers request for a recommendation of approval to the County Council for a rezone to include the Public Infrastructure (PI) Overlay Zone on 21.19 acres of leased property located in the Agricultural (A-10) Zone at approximately 3000 South 4400 West, Wellsville. Staff has shared their concern with the project's agent and recommended that the requested rezone footprint be reduced to more accurately reflect the telecommunication sites and facilities. The agent initially stated that they were not interested in reducing the requested rezone area but have now reduced the proposed rezone by removing parcel number 11-052-0010 from the proposal. This acreage is still excessive considering the use and staff recommends a recommendation of denial based on the findings of fact as noted in the staff report.

**Joe Chambers** I am the agent for Frandsen Media. What I've handed to you is a copy of the plat and I just want to go over some history. The area that is marked in green is the entire 93 acre parcel that the lease in question takes up. The portion of the property that we initially reduced it down to is marked in yellow and the portion that we excluded from the original request is in blue. Let me indicate to you that in proceeding to do this we are not doing anything that wasn't done previously. In 1980 KVNU's towers were located on 1400 north. Due to the development of Logan at that time the owners of KVNU contacted the owners of the land, Mr. and Mrs. Haslam, who were the sole owners of the property at that time, and entered into a lease prepared by Olson and Hogan law firm. The lease is to continue into perpetuity from the date the lease was signed.

In paragraph 3 in the lease the lessee was granted the right to use so much of the leased premises as the lessee may choose to erect towers. If you look at paragraph four the lessor is given the right to use the leased ground for anything that does not interfere with the towers.

Around May of 1981 Cache Valley Broadcasting came before the planning commission and in the minutes of August 1981 the minutes reflect that we were given the right to erect 2-350 foot tall AM broadcasting towers on the property. Mr. Haslam was present at the meetings and Cache Valley Broadcasting applied for the conditional use permit (CUP) under the lease agreement as the owners of the property. If you look at the lease, you can see the right to use the land for broadcasting towers in perpetuity to us. I don't know if the owners dispute that. But there was a letter sent in September to Mr. Runhaar from an attorney here in town representing the Hamilton's, who succeeded to the parcel of property that has been excluded from this application, who challenged our right to the property. Rather than fight that battle we have decided to exclude it. Tonight is the first that I have heard that anyone else has come forward to object this. Since I haven't had a chance to talk to them or their attorney I don't know if that is based on them being a public citizen and objecting in general or if they feel that their rights as a landowner are being challenged and that we don't have the right to proceed; if it's the latter than I'm going to have to be forced to deal with that issue in a court setting.

As a result of the permit we presently have there are two towers. The place where we want to erect a new tower is adjacent to the building and you have to understand that due to the transmission of the AM facilities, if you lay the tower down, metaphorically there is a 350 degree radius, there is a copper electrical conduit going out to a circular piece of copper that is buried 6 to 8 inches. So even though the tower takes up a minimum footprint on the ground, the actual area we need for the tower takes up a much larger area underneath the ground. In addition to that, from the transmitter building there is a conduit that goes out to each tower that is buried. We are asking to erect a 100 foot tower to replace an existing tower that is on the building. We applied to the planning office. The base zone on the ground is Agriculture. Since the towers were put up the council has adopted a PI Overlay Zone and rather than argue with the planning office as to whether our non-conforming use exists on there, as to the agricultural zone that we have CUP for the towers, we have a CUP. Because the Overlay zone was adopted after we put up the towers, the existing towers are a non-conforming use as to the Overlay zone. We can't expand but there is an argument that we can intensify the use. In a certain sense we've talked to the Planning office and we feel that the erection of a 100 foot tower is intensifying the use but rather than fight this we decided to apply for the rezone. We didn't adopt the PI Overlay Zone, the county did. I don't want to seem recalcitrant on this, but every time we want to erect a tower we have to come back and pay \$450 rezone fee and come before this commission, we would like to do it all at once. If we have to reduce the footprint of the area we are willing to do that if that is what has to be done to make this happen. We just feel it is unjustified to have to come before this body every time we want to build a tower when we already have a lease.

The situation on the property, I don't know, I assume that some of the people here represent the current landowners. If the dispute is in regards to the validity of the lease I would like to reserve a few minutes to talk about that because I'll be very honest with you, the concept of a lease in perpetuity is not that common, but it's not necessarily uncommon. It is a conveyance of a fee subject to a condition subsequent. Because it's a conveyance it doesn't violate the law of perpetuity. Mr. Hogan, who is a very well respected attorney in this area, drafted the original lease. The primary objection that I am getting from the current owners, Mr. and Mrs. Haslam did have the right to enter into the lease.

The property is ideal for an AM transmitter tower site because the property is soggy and wet most of the year. There is constant water movement underneath the ground that is draining there. Because of the way in which AM transmitting facilities are used, it is very prime land for us. We negotiated with the landowners at that time.

The Bullen Family sold the station and we bought it and part of the station assets were this lease. If the Hamilton and the Haslam heirs have any dispute with that we didn't enter into it, we bought it. We fully intend to protect our rights in it. We are doing nothing more than what Cache Valley Broadcasting did originally when they applied for the CUP. All we're doing is applying under the owner of the lessee and it is very clear that their rights are subservient to our rights on the property. So when this commission goes ahead and takes a recommendation to deny the application on the basis of the landowners object to us proceeding as the owners, I don't believe, think there is much basis in that to do it. If the object is to the footprint to the site we are willing to reduce it but understand it puts me in a dilemma. If I agree to voluntarily reduce the footprint and you go ahead and deny it, why shouldn't I just have it denied on the bigger footprint? So we wanted to at least come before you and put our case. I understand the County's concern is the county's ordinance says that we can have a sewage treatment plant on that property. With all due respect we can't do that due to paragraph 3 under the lease which states we can only use it for radio towers. The rezone request was put in for the entire 90 acres simply as an administrative piece. If the commission's position is that you are going to recommend denial simply on the size of the footprint, then we are willing to reduce it down to what we need. We want the tower, we need the tower, KVNU is part of what I understand is the emergency broadcast system and the building out there actually has a bomb shelter in it, it is that important of a facility. We think the telecommunications tower is important.

**Ellis** there was a concern last time from the other party of the lease that they didn't want a sewage pit built on their property. But you've explained that the lease doesn't allow you to do that, but the rezone does allow the property owner to sell and a new owner could do that.

**Mr. Chambers** the problem here is the county council passes an ordinance and there are unforeseen consequences that could happen. We want a communications tower and the lease provides for that and we are willing to be as flexible as needed.

Staff and commission discussed existing towers and trying to get them all in the correct zoning. However, when companies apply for even an additional antenna that is an expansion of the use and they must come before the commission. Also, many of the companies would prefer to come and apply for the process one tower at a time. Staff hasn't seen one project of this type turned down yet. The biggest concern with towers is the proximity to business and other entities. That isn't an issue here. Staff just received comment from the Archibald's and they are concerned about the property but the county doesn't engage in disputes between property owners.

**Mr. Chambers** I've done a lot of research on this topic and perpetual leases are the way in which conveyances were made with property from 1650 until about 1846. The reason they weren't used after that the law developed to recognize the install contract. The common law from this time this nation was settled, the concept of selling property by a contract was formed. So you didn't have an installment contract so this was the equivalent method of how it was used. In fact Mr. Hogan has reached back to this economic tool and put in place in this case, I think was intended to preserve the landowner's rights to use the land for cattle grazing and other uses other than what



would be inconsistent of our use of the property. But the majority of the rights have transferred to us. There comes a time in the lease that the owner's rights are not there, it's a reversion interest, and the lessee has the right to do with it and that is what we are asserting that we have. I'm not asking you to make a judicial decision on it but it seems to me that it would be somewhat inconsistent for you to say that you don't want to make a decision because someone is claiming a right to inherit the property, which hasn't even matured yet, we are telling you that they are going to get and you have a definite lease and prior minutes with no objection to it. These guys are the successors and they take the property subject to the lease.

Staff and commission discussed if landowners have different rights compared to anyone else in the county when it comes to rezones. That is part of the problem here for staff. The county does not distinguish between lessee and the owners of the land, the county allows both. If there is a civil dispute, the county backs away and allows that to occur outside of them. The options here are to make a decision based on the facts and if a civil dispute occurs than that happens. The letter given to the commission is but the objectors do not yet own the property. The lease states that they have the right to erect towers. However, if you rezone 29 acres, they can still erect 50 towers. Even if the applicant owned the land outright, rezoning 29 acres is not something the commission has done in the past and many members are not amenable to that.

**Chambers** we are willing to reduce the footprint to 50 or 60 feet adjacent to the building of where the applicant states it is going to be. There were some questions raised by the attorney of the Hamilton's was the impacts of the valuation of their property.

**Larson** I don't think that will be material to our decision.

**Mr. Chambers** let me state that it's not going to have an adverse impact on the taxes. I did want to state that I thought this meeting was planned for Sept. 6 and not the 14<sup>th</sup>.

**Olson** what is the purpose of trying to rezone this to the PI Overlay?

**Mr. Chambers** we are not allowed to put another tower on the property without the rezone. I have two options, I can file for the rezone and then file for the CUP, which I've done, or I can sue the county and claim that our non-conforming use is simply an intensification of the use. It's easier to come before you and ask. If you are not inclined to grant the whole rezone, then we will reduce the footprint.

**Ellis** can we change it on the fly?

**Runhaar** There is the issue on the ownership and the rights; I think we leave that to other parties to determine what the outcome of that will be.

**Larson** before we talk decisively about that I would like to hear from the audience.

**Laurie Haslam Archibald** I wrote you this letter. Yes this is in probate, but that is a government deal. I've read the contract and everything that comes with it. I'm not stopping the towers; my main concern is with paragraph 7 of the lease, it talks about taxes. If I inherit this, I inherit the

taxes. If you take this out of greenbelt with this overlay, I'm stuck with a big amount of taxes. That is my problem.

**Runhaar** I talked with the assessor on this and I don't believe this is going to be pulled from greenbelt even if the entire area was to be rezoned to the PI Overlay. What would occur, those areas that were built out would be a change of use, and those specific areas would be removed from greenbelt. It may increase your commercial acreage from 1 to 1.4 or 1.8.

**Ms. Archibald** so you're saying that the 20 acres would still be greenbelt because in this contract it states that we will pay the taxes on the property. I just don't want to have to dig up a thousand dollars for taxes on a piece of land that isn't worth anything.

**Runhaar** there will be an increase of taxes; it will likely be a very small increase.

**Ms. Archibald** that is my biggest grief, taxes.

**Larson** that might be a matter between you that you can negotiate; but that would be a matter between the two of you.

**Ms. Archibald** right now I'm just representing because it is still in probate. It's not legal yet, but if I do inherit this, that is why I'm here. At the last meeting you mentioned scaling this down, and that wouldn't affect greenbelt. I do have pictures of the areas as it looks like now.

**Olson** are there taxes being assessed on the towers themselves and does the radio company pay them?

**Ms. Archibald** yes, my dad would get the tax notice and he would pay the entire amount and then he would contact the radio station for their share of the taxes. But it is a lot of running around to get that done.

**Runhaar** in this case, the greenbelt is at a taxable value of \$1500, the commercial is at \$40,000. So that is where the taxable difference is happening. There will be an impact to some degree, unfortunately the portions of property that may be removed from greenbelt.

**Ms. Archibald** if they take everything out of greenbelt it leaves me to pay all the taxes on the property in the PI zone if I inherit this. I know they are going to put the tower there, but I don't want the whole thing taken out of greenbelt.

**Mr. Chambers** send the tax bill to us and we will pay and come back to you to recoup your portion.

**Runhaar** we can do this in two parts. We will only deal with it on the rezone level, and if it does come to a contention between the owners and KVNU, let them deal with that. So you just need to look at item number 1. It sounds like the applicant is willing to reduce the size of the proposed rezone area. Staff would recommend approval of this proposal to the County Council with the reduced size of the rezone area.

**Larson** to clarify, do you protest any of this, or was it just the whole 20 acres?

**Ms. Archibald** I am protesting it if the land is taken out of greenbelt. I'm fine with the area around the tower and the building because that isn't going to take it out of greenbelt.

**Larson** so you are ok with the footprint area that just covers the needs of the tower?

**Ms. Archibald** yes, I don't see why they need to take all of it, but I don't want to see this taken out of greenbelt and cause us a lot tax money.

**White** are you effectively using roughly 6 acres out of greenbelt?

**Mr. Chambers** no.

**Larson** could it just be an easement?

**Runhaar** really what we care about is the tower and support buildings. If you have the wires running to and from the towers under the ground, that would be more a concern with the property owners.

**Ellis** is it radius or circumference?

**Mr. Chambers** radius.

**Ms. Archibald** that copper wire is under the ground and hasn't been a problem.

**Runhaar** we don't view that any different than a distribution wire for power.

Staff and commission discussed the relationship of the building to the property line of the other parcel that they have pulled out of the application.

***Olson** motioned to approve the application with the findings of fact as amended and limiting the rezone area to reflect the actual foot print of the telecommunication facilities; **Godfrey** seconded; **Passed 5, 0.***

### **#3 Jackson Ridge Subdivision (Lynn Hulme)**

**Harrild** that the applicant was not present and no agent was present to represent Mr. Lynn Hulme's request for a recommendation of approval to the County Council for a 7-lot subdivision on 80.33 acres of property in the in the Agricultural (A-10) Zone located at approximately 10600 South 1000 East, Avon.

***Godfrey** motioned to continue Jackson Ridge Subdivision to the next meeting; **Ellis** seconded; **Passed 5, 0.***

Runhaar reviewed Edge Excavation's CUP. They are currently operating without a CUP and as such, Runhaar requested that the Edge Excavation CUP be on the next agenda to reconsider or

revoke the Planning Commission's previous decision unless the proponent meets all conditions of approval.

**8:04:00**

**Adjourned**